

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

UNITED STATES OF AMERICA, )  
PLAINTIFF, )  
VS. ) SAN JOSE, CALIFORNIA  
RAMESH "SUNNY" BALWANI, ) APRIL 22, 2022  
DEFENDANT. ) VOLUME 21  
 ) PAGES 3451 - 3696

TRANSCRIPT OF TRIAL PROCEEDINGS  
BEFORE THE HONORABLE EDWARD J. DAVILA  
UNITED STATES DISTRICT JUDGE

## A P P E A R A N C E S:

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PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY  
TRANSCRIPT PRODUCED WITH COMPUTER

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BY: GEORGE SCAVDIS

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1 SAN JOSE, CALIFORNIA

APRIL 22, 2022

2 PROCEEDINGS

3 (COURT CONVENED AT 8:35 A.M.)

4 (JURY OUT AT 8:35 A.M.)

5 THE COURT: WE'RE ON THE RECORD IN THE BALWANI

6 MATTER. ALL COUNSEL ARE PRESENT. MR. BALWANI IS PRESENT.

7 WE'RE OUTSIDE OF THE PRESENCE OF THE JURY.

8 WE WERE GOING TO DISCUSS A COUPLE OF MATTERS THIS MORNING.

9 FIRST OF ALL, COUNSEL, I THINK MS. ROBINSON PROVIDED YOU

10 WITH A GRAPH, A GRAPHIC OF -- DO YOU HAVE THIS? -- OF THE

11 JURY'S AVAILABILITY? DID THEY GET THAT?

12 THE CLERK: NO, I HAVEN'T GOT THAT. I APOLOGIZE.

13 THE COURT: OH, THIS ONE (INDICATING)?

14 I THOUGHT IT WAS GOING TO BE PRINTED.

15 THE CLERK: I'LL ASK MICHELLE.

16 THE COURT: THANKS.

17 WE'LL GET YOU THIS IN JUST A MOMENT. IT'S A COMPILATION

18 OF THE JURY'S AVAILABILITY FOR EXTENDED TIME, AND WE'LL GET YOU

19 COPIES OF THAT IN JUST A MOMENT.

20 ALSO, IN REGARDS TO THE JURY, WE'VE HAD REQUESTS THAT THE

21 JURORS BE ABLE TO MOVE THEIR SEATS INDEPENDENTLY, AND I'M GOING

22 TO -- SOME OF THEM WANT TO MOVE ABOUT THE JURY BOX.

23 I DON'T THINK THAT'S APPROPRIATE TO -- I'VE TALKED ABOUT

24 AN AIRLINE FLIGHT AND THIS IS NOT SELF-SELECT YOUR SEAT.

25 BUT WHAT I WILL DO IS HAVE THEM MOVE FRONT AND BACK AND

08:37AM 1 KIND OF LIKE A LINE CHANGE, AND MR. BOSTIC IS NOW FAMILIAR WITH  
08:37AM 2 THAT CONCEPT. SO WE'LL ALLOW THEM TO MOVE FRONT AND BACK TO  
08:37AM 3 ALLOW THEM TO CHANGE THEIR SEATING.

08:37AM 4 I THINK THERE'S BEEN A REQUEST FOR JUROR NUMBER 2,  
08:37AM 5 PERHAPS, TO MOVE TO A DIFFERENT SEAT. HE IS A TALLER  
08:37AM 6 INDIVIDUAL, AND JUST FOR TRIAL MANAGEMENT, I DON'T WANT HIM TO  
08:37AM 7 SIT IN FRONT OF SOMEONE AND BLOCK THEM.

08:37AM 8 SO WE'LL PROBABLY ASK HIM TO SIT IN MAYBE ONE OF THE  
08:37AM 9 CORNER SEATS. SO THAT'S THE ONLY CHANGE IN THE JURY  
08:37AM 10 COMPOSITION NOW.

08:37AM 11 ANY COMMENT ON THAT?

08:37AM 12 MR. SCHENK: NO, YOUR HONOR.

08:38AM 13 MR. COOPERSMITH: NO, YOUR HONOR.

08:38AM 14 THE COURT: OKAY. THANK YOU.

08:38AM 15 I ALSO ASKED MS. ROBINSON TO PROVIDE YOU WITH COPIES OF A  
08:38AM 16 MOTION THAT WILL BE CALENDARDED THAT WILL BE HEARD ON MONDAY, I  
08:38AM 17 THINK, ON OUR REGULAR CRIMINAL CALENDAR.

08:38AM 18 I DON'T KNOW IF YOU WERE SERVED OR IF YOU RECEIVED A COPY  
08:38AM 19 OF THESE PLEADINGS, THAT IS, IF YOU WERE SERVED BY THE MOVING  
08:38AM 20 PARTY OR NOT.

08:38AM 21 BUT IT'S SCHEDULED FOR MONDAY AT 1:30. I JUST WANTED YOU  
08:38AM 22 TO HAVE COPIES OF THE PUBLIC FILINGS FOR WHATEVER REASON AND  
08:38AM 23 INTEREST YOU MIGHT HAVE.

08:38AM 24 MR. COOPERSMITH: IS THIS THE MOTION BY MR. RAFAT?

08:38AM 25 THE COURT: YES. YES.

08:38AM 1 MR. COOPERSMITH: THANK YOU. YES, WE'VE RECEIVED  
08:38AM 2 THAT.

08:38AM 3 MR. SCHENK: YOUR HONOR, JUST ONE QUESTION ON  
08:38AM 4 THAT --

08:38AM 5 THE COURT: OH, THAT'S BETTER.

08:38AM 6 THE CLERK: SORRY.

08:38AM 7 MR. SCHENK: WOULD THE COURT BENEFIT FROM THE  
08:39AM 8 GOVERNMENT'S PRESENCE AT THE HEARING ON MONDAY?

08:39AM 9 THE COURT: IT'S A MOTION INTERVENE IN THE CASE, AND  
08:39AM 10 YOU'RE PARTIES IN THE CASE.

08:39AM 11 I READ THE DECLARATION. THE DECLARATION SUGGESTS THAT  
08:39AM 12 YOU'VE BEEN SERVED. I DON'T KNOW IF YOU HAD OR NOT. THE COURT  
08:39AM 13 IS NOT ACTING AS AN AGENT OF THE MOVING PARTY IN PROVIDING YOU  
08:39AM 14 COPIES. THESE ARE ON THE PUBLIC DOCKET, OF COURSE.

08:39AM 15 BUT I GIVE IT TO YOU FOR YOUR INFORMATION AS TO WHETHER OR  
08:39AM 16 NOT YOU FEEL YOU NEED TO BE PRESENT AT THE HEARING TO SPEAK AS  
08:39AM 17 TO WHETHER OR NOT AND WHAT ACTION THE COURT SHOULD TAKE ON THE  
08:39AM 18 PLEADINGS.

08:39AM 19 I DON'T KNOW IF YOU'VE SEEN THEM OR NOT. YOU DON'T HAVE  
08:39AM 20 TO ANSWER THAT, BUT I'VE JUST PROVIDED THEM TO YOU TODAY FOR  
08:39AM 21 YOUR BENEFIT AND YOUR CONSIDERATION.

08:39AM 22 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

08:39AM 23 MR. SCHENK: THANK YOU.

08:39AM 24 THE COURT: ALL RIGHT. NEXT, LET'S TALK ABOUT --  
08:39AM 25 LET'S SEE. I AM GOING TO READ THE STIPULATION IN DOCUMENT 1402

08:40AM 1 THIS MORNING TO THE JURY. THAT'S THE "WIRED" MAGAZINE ARTICLE,  
08:40AM 2 AS WE'VE DISCUSSED.

08:40AM 3 I HAVE READ AND REVIEWED -- AND MOVING ON TO ANOTHER  
08:40AM 4 TOPIC, I'VE READ AND REVIEWED THE REVISED PROPOSED ORDER  
08:40AM 5 SUBMITTED BY THE DEFENSE IN REGARDS TO A CURATIVE INSTRUCTION,  
08:40AM 6 AND THE COURT HAS CONSIDERED THIS, CONSIDERED THE COMMENTS OF  
08:40AM 7 COUNSEL AND THEIR ASSISTANCE IN THIS ISSUE, AND THE COURT,  
08:40AM 8 RESPECTFULLY, IS NOT GOING TO GIVE THIS. THE COURT DOES NOT  
08:40AM 9 FEEL THAT THE CONDUCT THAT OCCURRED IN THE EXAMINATION OF THE  
08:40AM 10 WITNESS CAUSES -- MR. EDLIN, CAUSES AND RISES TO THE LEVEL THAT  
08:40AM 11 A CURATIVE INSTRUCTION IS APPROPRIATE.

08:40AM 12 I DON'T BELIEVE IT IS IN THIS MATTER. SO I'M GOING TO  
08:40AM 13 RESPECTFULLY DECLINE THE INVITATION TO GIVE THIS INSTRUCTION.

08:40AM 14 SO THANK YOU FOR THAT.

08:40AM 15 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

08:40AM 16 I DO UNDERSTAND THE COURT'S RULING, BUT WILL THE COURT  
08:41AM 17 CONSIDER AS AN ALTERNATIVE INSTRUCTING THE JURY TO DISREGARD  
08:41AM 18 THE QUESTIONS AND ANSWERS?

08:41AM 19 THE COURT: NO. THANK YOU.

08:41AM 20 MR. COOPERSMITH: OKAY. THANK YOU, YOUR HONOR.

08:41AM 21 THE COURT: YOU'RE WELCOME.

08:41AM 22 AND FOR THE SAME REASONS.

08:41AM 23 NEXT, LET'S TALK ABOUT DOCUMENT 1381. THAT IS THE BENCH  
08:41AM 24 MEMORANDUM REGARDING EVIDENCE OF PRIOR INCONSISTENT STATEMENTS.  
08:41AM 25 THIS WAS FILED BY THE DEFENSE.

08:41AM 1 MR. COOPERSMITH, ANYTHING ELSE ON THIS?

08:41AM 2 MR. COOPERSMITH: MY COLLEAGUE, MS. SCHURICHT, HAS

08:41AM 3 HOPEFULLY A BRIEF PRESENTATION OF THAT ISSUE.

08:41AM 4 THE COURT: SURE.

08:41AM 5 MR. COOPERSMITH: AND I THINK MR. BOSTIC IS PREPARED

08:41AM 6 TO SPEAK TO THAT ISSUE AS WELL.

08:41AM 7 THE COURT: OKAY.

08:41AM 8 GOOD MORNING.

08:41AM 9 MS. SCHURICHT: GOOD MORNING.

08:41AM 10 MAY I REMOVE MY MASK?

08:41AM 11 THE COURT: PLEASE.

08:41AM 12 MS. SCHURICHT: GOOD MORNING, YOUR HONOR.

08:41AM 13 SACHI SCHURICHT ON BEHALF OF MR. BALWANI.

08:42AM 14 I APPRECIATE HAVING TIME THIS MORNING TO DISCUSS ONE

08:42AM 15 METHOD OF CROSS-EXAMINATION THAT THE DEFENSE MAY PURSUE WITH

08:42AM 16 DR. ROSENDORFF, AND POTENTIALLY WITH OTHER GOVERNMENT WITNESSES

08:42AM 17 AS WELL.

08:42AM 18 AS YOU LIKELY GATHERED FROM OUR BENCH MEMORANDUM, AND WE

08:42AM 19 ALSO SENT A FEW VIDEO CLIPS TO THE COURT LAST NIGHT --

08:42AM 20 THE COURT: THREE.

08:42AM 21 MS. SCHURICHT: YES, THREE. AND APOLOGIES, WE HAD

08:42AM 22 TO SEND THREE REPLACEMENT VIDEOS LATER IN THE EVENING.

08:42AM 23 THE COURT: I MAY NOT HAVE SEEN THOSE. I SAW ABOUT

08:42AM 24 THREE LAST NIGHT OR SOMETHING LIKE THAT.

08:42AM 25 MS. SCHURICHT: I'M SORRY. WE CAN MAKE SURE YOU

08:42AM 1 HAVE THE PROPER ONES AVAILABLE IF YOU WOULD LIKE TO REVIEW  
08:42AM 2 THEM.

08:42AM 3 THE COURT: AND YOU'VE PROVIDED THE GOVERNMENT WITH  
08:42AM 4 THOSE AS WELL?

08:42AM 5 MS. SCHURICHT: YES, AND ADDITIONAL ONES AS WELL.

08:42AM 6 AS YOU GATHERED, WE THINK DR. ROSENDORFF HAS TESTIFIED  
08:42AM 7 WITH STATEMENTS THAT ARE INCONSISTENT WITH PRIOR STATEMENTS HE  
08:42AM 8 MADE UNDER OATH IN DEPOSITIONS IN RELATED CIVIL LITIGATION.

08:42AM 9 THE COURT: AND WHAT HAPPENS IN TRIAL WHEN THAT  
08:42AM 10 OCCURS?

08:42AM 11 MS. SCHURICHT: WELL, THERE ARE DIFFERENT APPROACHES  
08:43AM 12 THE DEFENSE CAN TAKE, YOUR HONOR. I THINK THERE'S KIND OF A  
08:43AM 13 CLASSIC FORM OF IMPEACHMENT WHERE THE DEFENSE MAY READ THE  
08:43AM 14 PRIOR INCONSISTENT STATEMENT AND CONFRONT THE WITNESS WITH IT  
08:43AM 15 ON THE STAND.

08:43AM 16 AS OUR MEMO EXPLAINED, WE THINK THE RULES ALSO PERMIT THE  
08:43AM 17 ADMISSION INTO EVIDENCE OF THE PRIOR INCONSISTENT STATEMENTS  
08:43AM 18 THEMSELVES IN THE MOST PROBATIVE FORM THAT IS AVAILABLE TO THE  
08:43AM 19 DEFENSE.

08:43AM 20 THE COURT: SO IS THERE A DISTINCTION BETWEEN 613  
08:43AM 21 AND 801?

08:43AM 22 MS. SCHURICHT: I THINK SO. I THINK THEY BOTH APPLY  
08:43AM 23 HERE.

08:43AM 24 RULE 801 MAKES CLEAR THAT A PRIOR INCONSISTENT MADE UNDER  
08:43AM 25 PENALTY OF PERJURY IN A LEGAL PROCEEDING IS NOT HEARSAY.

08:43AM 1 THE COURT: IT'S NOT HEARSAY.

08:43AM 2 MS. SCHURICHT: IT'S ADMISSIBLE FOR ITS TRUTH.

08:43AM 3 THE COURT: IT'S SUBSTANTIVE EVIDENCE THEN.

08:43AM 4 MS. SCHURICHT: EXACTLY.

08:43AM 5 AND HERE DR. ROSENDORFF HAS TESTIFIED ABOUT ISSUES THAT

08:43AM 6 ARE HIGHLY MATERIAL TO THE CASE, AND WHEN THERE'S NO OTHER BAR

08:43AM 7 TO THE ADMISSION OF THAT EVIDENCE, WE THINK A VIDEO RECORDING

08:43AM 8 THAT SHOWS HIS DEMEANOR, HIS BODY LANGUAGE, OTHER VERBAL AND

08:44AM 9 NONVERBAL INDICIA OF CREDIBILITY, WE THINK THAT'S THE MOST

08:44AM 10 PROBATIVE SUBSTANTIVE EVIDENCE, AS YOU SAY, FOR THE JURY TO

08:44AM 11 REVIEW.

08:44AM 12 THE COURT: HAVE YOU PREPARED A TRANSCRIPT OF THOSE

08:44AM 13 DEPOSITIONS? I DIDN'T SEE THOSE.

08:44AM 14 DO YOU HAVE TRANSCRIPTS?

08:44AM 15 MS. SCHURICHT: WE DO. WE HAVE CREATED STAND ALONE

08:44AM 16 EXCERPTS OF THE PRECISE STATEMENTS.

08:44AM 17 THE COURT: I SEE.

08:44AM 18 MS. SCHURICHT: AND I SHOULD SAY WE HAVE CREATED

08:44AM 19 SHORT VIDEO CLIPS WHEN THAT IS AVAILABLE, FOR INSTANCE, FOR

08:44AM 20 DEPOSITIONS THAT WERE VIDEO RECORDED.

08:44AM 21 IT'S POSSIBLE THAT DR. ROSENDORFF MAY TESTIFY IN A WAY

08:44AM 22 THAT IS INCONSISTENT WITH, FOR INSTANCE, SOMETHING SAID AT THE

08:44AM 23 HOLMES TRIAL.

08:44AM 24 WE, OF COURSE, DON'T HAVE A VIDEO RECORDING OF THAT, BUT

08:44AM 25 WE'VE CREATED EXCERPTS OF THE TRANSCRIPT.

08:44AM 1 THE COURT: OKAY.

08:44AM 2 MS. SCHURICHT: AND JUST TO FINISH ANSWERING YOUR

08:44AM 3 PRIOR QUESTION, RULE 613(B) I THINK ALSO APPLIES HERE, BUT

08:44AM 4 ALLOWS THE ADMISSION OF EXTRINSIC EVIDENCE OF A PRIOR

08:44AM 5 INCONSISTENT STATEMENT REGARDLESS OF WHETHER IT WAS MADE UNDER

08:44AM 6 OATH OR NOT.

08:44AM 7 BUT THAT ALLOWS THE ADMISSION OF THIS EVIDENCE FOR

08:45AM 8 IMPEACHMENT PURPOSES.

08:45AM 9 THE COURT: NOT AS SUBSTANTIVE EVIDENCE.

08:45AM 10 MS. SCHURICHT: RIGHT, RIGHT.

08:45AM 11 TO BE CLEAR, WE THINK THEY BOTH APPLY HERE. WE THINK IT'S

08:45AM 12 ADMISSIBLE FOR ITS TRUTH AS WELL.

08:45AM 13 THE COURT: LET ME -- THE OBSERVATION THAT I WOULD

08:45AM 14 MAKE ON THE VIDEOS THAT I'VE LOOKED AT, AND IT SOUNDS LIKE

08:45AM 15 THEY'RE NOT THE ONES THAT YOU SEEK TO INTRODUCE, THEY'RE NOT

08:45AM 16 THE UPDATED ONES, BUT I LOOKED AT A COUPLE OF THEM.

08:45AM 17 I DON'T KNOW THE CONTEXT -- EXCUSE ME. I DON'T KNOW

08:45AM 18 THE -- WELL, THE CONTEXT OF WHEN THOSE WERE TAKEN, IF THEY WERE

08:45AM 19 PART OF AN S.E.C. -- THEY CERTAINLY WEREN'T PART OF THE HOLMES

08:45AM 20 TRIAL OR SOME OTHER CIVIL MATTER.

08:45AM 21 BUT WHAT I DID NOTE WAS THAT THERE WAS A ROLLING

08:45AM 22 TRANSCRIPT, AS WE OFTEN SEE, AND WHICH CAPTURED OBJECTIONS FROM

08:45AM 23 COUNSEL.

08:45AM 24 WHICH IS A PROBLEM, I THINK. I'M JUST GIVING YOU A HEADS

08:45AM 25 UP ON THAT FOR THE VIDEO PURPOSE.

08:46AM 1 SO THAT'S A CONSIDERATION I WANT TO LEAVE YOU WITH FOR  
08:46AM 2 SHOWING THE VIDEOS. I'M NOT QUITE CONVINCED THAT THAT PORTION,  
08:46AM 3 SHOULD THE JURY RECEIVE THAT, THAT IT CONTAINS OBJECTIONS AND  
08:46AM 4 ALSO CONTAINED THE ROLLING SCRIPT, AND I DON'T KNOW IF YOU CAN  
08:51AM 5 MODIFY THAT OR NOT.

08:51AM 6 MS. SCHURICHT: I BELIEVE THAT MR. ALLEN CAN REMOVE  
08:51AM 7 THE ROLLING SCRIPT AT THE BOTTOM IF THAT'S THE COURT'S  
08:51AM 8 PREFERENCE.

08:51AM 9 AND THEN I THINK OF COURSE THE AUDIO STILL CAPTURES SOME  
08:51AM 10 OF THE ATTORNEY'S COMMENTS. I THINK FOR SOME OF THEM IT'S  
08:51AM 11 ALMOST INAUDIBLE BECAUSE THE WITNESS OR THE DEONENT HIMSELF IS  
08:51AM 12 THE ONLY ONE MIKED UP.

08:51AM 13 I'M NOT SURE IF IT'S ANY COMFORT FOR THE COURT, BUT I WILL  
08:51AM 14 NOTE THAT THE JURY ALSO HEARS OUR OBJECTIONS HERE IN COURT AND  
08:51AM 15 IS INSTRUCTED THAT SHOULD NOT AFFECT THEIR INTERPRETATION OF  
08:51AM 16 THE ULTIMATE EVIDENCE.

08:51AM 17 THE COURT: AND IN COURT THEY GET THE BENEFIT OF THE  
08:51AM 18 COURT'S RULING.

08:51AM 19 MS. SCHURICHT: TRUE. THOUGH, FOR INSTANCE, IF AN  
08:51AM 20 OBJECTION IS OVERRULED, IT STILL APPEARS ON THE RECORD, THE  
08:51AM 21 JURY STILL HEARD IT.

08:51AM 22 SO I'M NOT SURE IT WOULD BE THAT CONFUSING TO THEM, BUT WE  
08:51AM 23 CAN CERTAINLY REMOVE THAT ROLLING SCRIPT.

08:51AM 24 THE COURT: OKAY. THAT WAS AN OBSERVATION I MADE.

08:51AM 25 MR. BOSTIC.

08:51AM 1 MR. BOSTIC: THANK YOU, YOUR HONOR.

08:51AM 2 I DON'T THINK THE GOVERNMENT DISAGREES -- WELL, LET ME SAY

08:51AM 3 THE GOVERNMENT DOESN'T DISAGREE WITH THE DEFENSE ABOUT THE

08:51AM 4 PROTOCOL FOR INTRODUCING ANY INCONSISTENT STATEMENTS INTO

08:51AM 5 EVIDENCE.

08:51AM 6 I AGREE THAT THAT IS PERMISSIBLE AND WE DON'T OBJECT TO

08:51AM 7 THE VIDEO BEING USED.

08:51AM 8 I THINK IT'S IMPORTANT TO STRESS THE PROCESS BY WHICH THAT

08:51AM 9 HAPPENS, AND HERE'S WHERE I'M SOMEWHAT CONCERNED THE PARTIES

08:51AM 10 MIGHT END UP PARTING WAYS.

08:51AM 11 OBVIOUSLY FOR A PRIOR INCONSISTENT STATEMENT TO BE

08:51AM 12 ADMISSIBLE UNDER THE RELEVANT RULE, IT MUST ACTUALLY BE

08:51AM 13 INCONSISTENT WITH SOMETHING THAT THE WITNESS HAS SAID ON THE

08:51AM 14 STAND.

08:51AM 15 I DID RECEIVE THE -- OR A BATCH OF PRIOR TESTIMONY

08:51AM 16 EXCERPTS FROM THE DEFENSE LAST NIGHT.

08:51AM 17 THIS MORNING I RESPONDED TO THEM WITH SOME RULE 106

08:51AM 18 ADDITIONS THAT THE GOVERNMENT FEELS ARE NECESSARY FOR SEVERAL

08:51AM 19 OF THOSE.

08:51AM 20 I'M NOT SURE WHETHER THE DEFENSE OPPOSED ANY OR ALL OF

08:51AM 21 THEM.

08:51AM 22 ACTUALLY, I'M INFORMED THAT THEY MAY AGREE WITH ONE, OR

08:51AM 23 ONE MIGHT BE INCLUDED IN THEIR SELECTED EXCERPT.

08:51AM 24 BUT I THINK AS OF NOW, LOOKING AT THE SECTIONS THAT THE

08:51AM 25 DEFENSE HAS PROPOSED, I'M HAVING TROUBLE SEEING THE LINE UP

08:51AM 1           BETWEEN THE PREVIOUS STATEMENTS THAT THEY WANT TO INTRODUCE AND  
08:51AM 2           ANY CONFLICTING TESTIMONY THAT DR. ROSENDORFF HAS GIVEN SO FAR.  
08:51AM 3           SO I DON'T WANT TO GET AHEAD OF OURSELVES IF SOME OF THESE  
08:51AM 4           ARE OFFERED IN ANTICIPATION THAT HE MAY SAY SOMETHING  
08:51AM 5           INCONSISTENT DURING THE REST OF THE CROSS-EXAMINATION.  
08:51AM 6           BUT TO THE EXTENT THAT THE DEFENSE THINKS THEY ARE RIPE  
08:51AM 7           NOW, AS TO ANY THAT THE DEFENSE THINKS THAT DR. ROSENDORFF HAS  
08:51AM 8           ALREADY TESTIFIED INCONSISTENTLY TO, IT MIGHT BENEFIT FROM SOME  
08:51AM 9           DISCUSSION NOW, BECAUSE I THINK EVEN BEFORE THE DEFENSE CAN  
08:51AM 10         REFER TO PRIOR TESTIMONY, EVEN ASKING THE WITNESS, DID YOU  
08:51AM 11         PREVIOUSLY TESTIFY, I THINK THAT NEEDS TO COME AFTER A PRIMA  
08:51AM 12         FACIE SHOWING HAS BEEN MADE OF AN INCONSISTENT STATEMENT.  
08:51AM 13         I DON'T THINK THAT SHOWING HAS BEEN MADE YET.  
08:51AM 14         MS. SCHURICHT: SO, FIRST OF ALL, I WILL CLARIFY,  
08:51AM 15         YES, SOME OF THE CLIPS THAT WE -- AND EXCERPTS THAT WE SHARED  
08:51AM 16         WITH THE GOVERNMENT LAST NIGHT WERE ANTICIPATORY AND WHETHER OR  
08:51AM 17         NOT WE SEEK TO ADMIT THEM WILL DEPEND ON HOW THE WITNESS  
08:51AM 18         TESTIFIES IN COURT TODAY. IF HE ANSWERS QUESTIONS CONSISTENTLY  
08:51AM 19         WITH HOW HE'S ANSWERED THEM IN THE PAST, WE'RE PERFECTLY HAPPY  
08:51AM 20         WITH THAT AND WILL NOT NEED TO INTRODUCE ADDITIONAL CLIPS.  
08:51AM 21         THE THREE VIDEOS THAT WE SENT TO THE COURT -- AND AGAIN, I  
08:51AM 22         APOLOGIZE THAT THE REVISED ONES WERE SENT SO LATE.  
08:51AM 23         THE COURT: 10:30, I THINK IT WAS 10:30 P.M.  
08:51AM 24         AND I HAVE TO APOLOGIZE TO YOU, I DID NOT -- I WAS ON THE  
08:51AM 25         COMPUTER AT 10:30 LAST NIGHT, BUT I DIDN'T CHECK ECF FOR ANY

08:51AM 1 FILINGS, SO I DIDN'T NOTICE THEM.

08:51AM 2 MS. SCHURICHT: THAT'S QUITE UNDERSTANDABLE,

08:51AM 3 YOUR HONOR.

08:51AM 4 I DO THINK FOR THOSE THREE EXCERPTS THERE HAS BEEN AN

08:51AM 5 INCONSISTENCY ESTABLISHED BASED ON WHAT DR. ROSENDORFF HAS

08:51AM 6 TESTIFIED TO ON WEDNESDAY.

08:51AM 7 I DID RECEIVE FOUR, I THINK, 106 ADDITIONS FROM THE

08:51AM 8 GOVERNMENT THIS MORNING. I'D BE HAPPY TO TALK THROUGH THEM. I

08:51AM 9 THINK WE MAY TAKE ISSUE WITH ONE OF THEM.

08:51AM 10 THE REMAINDER I THINK WE'RE ALREADY IN SUBSTANTIVE

08:51AM 11 AGREEMENT, OR WE DON'T SEE A PROBLEM WITH THE ADDITIONAL

08:51AM 12 PROPOSED CONTEXT.

08:51AM 13 SO PERHAPS I SHOULD RAISE THE ONE THAT THERE MAY BE

08:51AM 14 DISAGREEMENT ABOUT.

08:51AM 15 THE COURT: RIGHT. AND FIRST OF ALL, LET ME -- I

08:51AM 16 APPRECIATE THE OPPORTUNITY TO DISCUSS THIS BEFORE WE BEGIN.

08:51AM 17 WE'RE ENDING TODAY AT ABOUT 2:45, SO I APPRECIATE OUR TIME

08:51AM 18 BEFORE WE START EVIDENCE TO DISCUSS THESE ISSUES.

08:51AM 19 LOOKING FORWARD, I'M JUST CURIOUS IF THERE'S GOING TO BE

08:51AM 20 ISSUES REGARDING THIS, ARE WE -- BUT WE SHOULD THINK ABOUT A

08:51AM 21 PROTOCOL. ARE WE GOING TO STOP THE PROCEEDING AND REVIEW THE

08:51AM 22 TRANSCRIPTS OR WHATEVER THEY ARE TO HAVE THE COURT MAKE A

08:51AM 23 DECISION? IT SOUNDS LIKE THAT'S WHERE WE'RE HEADED.

08:51AM 24 MS. SCHURICHT: I'M HOPING WE CAN AVOID THAT

08:51AM 25 SITUATION, YOUR HONOR.

08:51AM 1 THE COURT: YES, I AGREE. I SHARE THAT.

08:51AM 2 MS. SCHURICHT: SO WE SHARED A FULLER BATCH OF

08:51AM 3 EXCERPTS WITH THE GOVERNMENT LAST NIGHT IN AN EFFORT TO GIVE

08:51AM 4 THEM AN OPPORTUNITY TO PREVIEW -- AGAIN, THIS IS ALL A BIT

08:51AM 5 ANTICIPATORY -- BUT TO PREVIEW WHAT WE MIGHT SEEK TO USE IN

08:52AM 6 THIS MANNER.

08:52AM 7 SO I'M HOPING IF THERE ARE CONCERNs ABOUT THE DEGREE OF

08:52AM 8 THE INCONSISTENCY OR POTENTIAL 106 ADDITIONS, THAT COULD BE

08:52AM 9 RAISED QUITE EFFICIENTLY. THE 106 ADDITIONS HAVE ALREADY BEEN

08:52AM 10 PROVIDED TO US, AND I THINK WE CAN WORK THAT OUT BEFORE WE MOVE

08:52AM 11 TO INTRODUCE ANYTHING.

08:52AM 12 AS TO WHETHER OR NOT AN INCONSISTENCY HAS BEEN

08:52AM 13 ESTABLISHED, I DO THINK THAT REQUIRES A STATEMENT BY STATEMENT

08:52AM 14 ASSESSMENT.

08:52AM 15 I WOULD POINT YOUR HONOR TO SOME CASE LAW CITED ON PAGE 2

08:52AM 16 OF OUR MEMORANDUM. I BELIEVE IT'S THE MORGAN CASE, THE TRAN

08:52AM 17 CASE, WHICH SAY THAT THE NINTH CIRCUIT HAS ADOPTED, IN LINE

08:52AM 18 WITH MOST OTHER CIRCUITS, A NON-TECHNICAL UNDERSTANDING OF

08:52AM 19 INCONSISTENCY. THE STATEMENTS DO NOT NEED TO BE DIAMETRICALLY

08:52AM 20 OPPOSED.

08:52AM 21 YOU UNDERSTAND.

08:52AM 22 SO I WOULD JUST SAY IF THERE'S A CLOSE CALL OR ANY

08:52AM 23 AMBIGUITY AROUND WHETHER THE STATEMENTS ARE INCONSISTENT, I

08:53AM 24 THINK IN THAT INSTANCE IT'S APPROPRIATE FOR THE JURY TO VIEW

08:53AM 25 THE TWO STATEMENTS AND TO ASSESS FOR THEMSELVES HOW

08:53AM 1 INCONSISTENT THEY THINK THEY ARE.

08:53AM 2 THE COURT: SHOULD THE COURT REVIEW THAT BEFORE THAT

08:53AM 3 PROCESS OCCURS?

08:53AM 4 MS. SCHURICHT: I THINK IF THE GOVERNMENT LODGES AN

08:53AM 5 OBJECTION ON THIS QUESTION OF INCONSISTENCY, IT'S PERFECTLY

08:53AM 6 PROPER FOR THE COURT TO DO THAT.

08:53AM 7 MR. BOSTIC: YOUR HONOR, I THINK, TO ANSWER THE

08:53AM 8 COURT'S QUESTION ABOUT PROCESS AND PROTOCOL GOING FORWARD

08:53AM 9 TODAY, THE GOVERNMENT HAS NO INTEREST IN NECESSARILY DELAYING

08:53AM 10 PROCEEDINGS.

08:53AM 11 BUT AS LEAST AS TO THE THREE STATEMENTS THAT THE DEFENSE

08:53AM 12 BELIEVES ARE RIPE FOR INTRODUCTION NOW, WE MIGHT BENEFIT FROM

08:53AM 13 DISCUSSING THOSE AT THIS TIME TO SEE IF THE COURT AGREES THAT

08:53AM 14 THOSE STATEMENTS WERE INCONSISTENT WITH A PRIOR TESTIMONY.

08:53AM 15 THE COURT: SURE. IS IT YOUR DESIRE TO INTRODUCE

08:53AM 16 THOSE THIS MORNING, TO TOUCH ON THOSE?

08:53AM 17 MS. SCHURICHT: I THINK AT LEAST ONE OF THEM,

08:54AM 18 YOUR HONOR. I'M NOT SURE ABOUT THE OTHER TWO.

08:54AM 19 THE COURT: WELL, LET'S TALK ABOUT THE ONE AT LEAST

08:54AM 20 THAT IS BEFORE US.

08:54AM 21 MS. SCHURICHT: SO THIS ONE I THINK IS MARKED AS

08:54AM 22 EXHIBIT 28052F.

08:54AM 23 UNFORTUNATELY, I ONLY HAVE ONE PRINTOUT WITH MY OWN NOTES

08:54AM 24 OF THE PROPOSED ADDITION.

08:54AM 25 MR. BOSTIC: THAT'S OKAY. I HAVE ACCESS TO THEM.

08:54AM 1 THE COURT: I BEG YOUR PARDON. THIS IS EXHIBIT?

08:54AM 2 MS. SCHURICHT: IT'S 28052F.

08:54AM 3 THE COURT: AM I GOING TO FIND THIS IN ONE OF THESE

08:54AM 4 BINDERS?

08:54AM 5 MS. SCHURICHT: YOU ARE, BUT I HAVE A PRINTOUT

08:54AM 6 (HANDING.)

08:54AM 7 THE COURT: OH, LOVELY.

08:54AM 8 THANK YOU.

08:55AM 9 (PAUSE IN PROCEEDINGS.)

08:55AM 10 THE COURT: OKAY. THANK YOU.

08:55AM 11 MS. SCHURICHT: YEAH. SO I'VE HANDED UP THE EXCERPT

08:55AM 12 THAT I'VE JUST REFERENCED, AND THEN I BELIEVE HIGHLIGHTED IN

08:55AM 13 YELLOW IS THE PORTION OF THE TESTIMONY FROM WEDNESDAY.

08:55AM 14 SO THE COURT MAY RECALL ON WEDNESDAY, I THINK ONE OF THE

08:55AM 15 GOVERNMENT'S FIRST QUESTIONS OF DR. ROSENDORFF WAS WHY HE

08:56AM 16 RESIGNED FROM THERANOS, AND I'VE HIGHLIGHTED HIS ANSWER HERE.

08:56AM 17 HE EXPLAINED THAT HE WAS INITIALLY EXCITED TO WORK AT THE

08:56AM 18 COMPANY, BUT AS TIME WENT BY -- AND I'M SKIPPING AHEAD TO

08:56AM 19 LINE 14 -- THE FREQUENCY AND SEVERITY OF COMPLAINTS THAT HE WAS

08:56AM 20 RECEIVING FROM CLINICIANS REALLY REACHED A CRESCENDO, "AND IT

08:56AM 21 GOT TO A POINT WHERE I FELT LIKE MY INTEGRITY AS A PHYSICIAN

08:56AM 22 WAS AT RISK."

08:56AM 23 AND THEN HE MENTIONS A CONCERN AS WELL ABOUT PROFICIENCY

08:56AM 24 TESTING.

08:56AM 25 THE EXCERPT THAT WE'VE ISOLATED HERE IN EXHIBIT 8 --

08:56AM 1 EXCUSE ME, 28052F IS FROM A DEPOSITION, I BELIEVE IN 2018 OR  
08:56AM 2 2019, WHERE DR. ROSENDORFF IS ALSO ASKED WHY HE STOPPED WORKING  
08:56AM 3 AT THERANOS, AND HIS ANSWER IS SIMPLY THAT HE WAS UNSATISFIED  
08:56AM 4 WITH MANAGEMENT'S RESPONSE ABOUT HIS PROFICIENCY TESTING  
08:57AM 5 CONCERNs.  
08:57AM 6 AND THEN NOTABLY, THE QUESTIONER THERE FOLLOWS UP TWICE  
08:57AM 7 AND ASKS HIM IF THERE WERE ANY OTHER CONCERNs THAT LED TO HIS  
08:57AM 8 RESIGNATION, AND HE SAID THAT WAS THE MAIN ONE.  
08:57AM 9 HE'S ASKED AGAIN, WERE THERE SMALLER CONCERNs THAT YOU HAD  
08:57AM 10 IN ADDITION TO THE PROFICIENCY TESTING ONE?  
08:57AM 11 AND HIS ANSWER IS NO.  
08:57AM 12 WE THINK ON THIS DISCRETE QUESTION OF WHY HE DECIDED TO  
08:57AM 13 ULTIMATELY RESIGN FROM THE COMPANY, THERE IS -- EVEN THOUGH A  
08:57AM 14 DIAMETRICALLY OPPOSITE ANSWER IS NOT REQUIRED, WE THINK THOSE  
08:57AM 15 ARE PRETTY CONSISTENT.  
08:57AM 16 THE GOVERNMENT HAS PROPOSED ADDING, I BELIEVE, OH, JUST  
08:57AM 17 ONE PAGE OF TESTIMONY FROM THE DEPOSITION -- WHICH, AGAIN,  
08:57AM 18 APOLOGIES, I DON'T HAVE A PRINTOUT.  
08:57AM 19 MR. BOSTIC: YOUR HONOR, WITH PERMISSION, I HAVE A  
08:57AM 20 BINDER FOR THE COURT WITH TWO TRANSCRIPTS, THE ARIZONA  
08:57AM 21 DEPOSITION TRANSCRIPT AND THE COLMAN DEPOSITION TRANSCRIPT.  
08:57AM 22 THESE ARE TWO FROM WHICH THE DEFENSE HAS EXCERPTED.  
08:58AM 23 IF I COULD PASS THAT UP TO THE COURT?  
08:58AM 24 THE COURT: SURE. THANK YOU.  
08:58AM 25 MR. BOSTIC: (HANDING.)

08:58AM 1 THE COURT: OKAY. AND YOU HAVE SOME 106 THAT YOU  
08:58AM 2 WOULD LIKE ME TO LOOK AT HERE?

08:58AM 3 MR. BOSTIC: YES, YOUR HONOR.

08:58AM 4 IN THE ARIZONA TRANSCRIPT, WHICH I BELIEVE IS THE FIRST  
08:58AM 5 TAB, THE DEFENSE'S EXCERPT, I BELIEVE, COMES FROM PAGE 167.

08:58AM 6 JUST A FEW PAGES LATER ON 177, DR. ROSENDORFF IS ASKED  
08:58AM 7 ABOUT THE CORRESPONDENCE THAT HE HAD WITH MS. HOLMES WHEN HE  
08:58AM 8 ASKED TO BE TAKEN OFF OF THE CLIA LAB LICENSE, THAT WAS  
08:58AM 9 EFFECTIVELY HIS RESIGNATION FROM THE COMPANY.

08:59AM 10 AND HE WAS ASKED ABOUT WHAT MADE HIM FEEL REAL  
08:59AM 11 UNCOMFORTABLE ABOUT WHAT WAS HAPPENING IN THE COMPANY, AND HE  
08:59AM 12 ANSWERED ABOUT LOSING CONFIDENCE IN THE ACCURACY OF THE LAB  
08:59AM 13 TESTING, BEING ASKED TO VOUCH FOR RESULTS THAT HE WAS NOT  
08:59AM 14 CONFIDENT IN, NOT KNOWING WHAT METHODS WERE BEING USED.

08:59AM 15 SO JUST A FEW MINUTES AFTER THE EXCERPT THAT THE DEFENSE  
08:59AM 16 IS OFFERING, HE PROVIDES A MORE FULL ANSWER TO THAT SAME  
08:59AM 17 QUESTION.

08:59AM 18 SO THE GOVERNMENT'S CONCERN IS THAT WITHOUT THIS  
08:59AM 19 ADDITIONAL TESTIMONY, THE JURY MIGHT BE LEFT WITH THE  
08:59AM 20 IMPRESSION THAT HE CAME UP WITH ADDITIONAL JUSTIFICATIONS FOR  
08:59AM 21 LEAVING IN BETWEEN THAT DEPOSITION AND TODAY.

08:59AM 22 THIS TESTIMONY A FEW PAGES LATER SHOWS THAT'S NOT THE  
08:59AM 23 CASE.

08:59AM 24 SO THE GOVERNMENT THINKS IT SHOULD COME IN WITH THAT  
08:59AM 25 DEFENSE EXCERPT UNDER RULE 106. IF NOT, IT SHOULD CERTAINLY BE

08:59AM 1 ADMISSIBLE AS A PRIOR INCONSISTENT STATEMENT.

08:59AM 2 THE COURT: COUNSEL.

08:59AM 3 MS. SCHURICHT: SO I WILL JUST MAKE CLEAR THAT WE

08:59AM 4 DON'T, WE DON'T DISAGREE THAT THE GOVERNMENT HAS AN OPPORTUNITY

09:00AM 5 TO ELICIT ADDITIONAL TESTIMONY FROM DR. ROSENDORFF.

09:00AM 6 IF HE HAS -- I BELIEVE HE ALREADY TESTIFIED ON WEDNESDAY

09:00AM 7 THAT HE WAS ASKED TO BE REMOVED FROM THE CLIA LICENSE AND FELT

09:00AM 8 A CERTAIN LEVEL OF DISCOMFORT WITH THAT, AND HE CAN CERTAINLY

09:00AM 9 BE ASKED ABOUT THAT AGAIN ON REDIRECT AND THE GOVERNMENT CAN

09:00AM 10 ASK HIM TO EXPLAIN ANY INCONSISTENCY IN HIS PRIOR TESTIMONY

09:00AM 11 THAT COMES OUT ON CROSS.

09:00AM 12 SO I'M NOT SURE THIS NEEDS TO BE ADDED TO THE EXCERPT

09:00AM 13 ITSELF WHEN DR. ROSENDORFF WAS ASKED POINT-BLANK, WHY DID YOU

09:00AM 14 RESIGN FROM THERANOS?

09:00AM 15 HE THEN WAS ASKED TWO FOLLOW-UP QUESTIONS, GIVING HIM

09:00AM 16 FURTHER OPPORTUNITY TO EXPRESS ANY EVEN SMALLER CONCERNs.

09:00AM 17 WE DON'T, WE DON'T TAKE ISSUE WITH HIS, HIS -- YOU KNOW,

09:00AM 18 WE CAN'T DENY IN HIS TESTIMONY THAT HE ASKED TO BE REMOVED FROM

09:00AM 19 THE CLIA LICENSE BECAUSE OF DISCOMFORT WITH THAT, AND I'M NOT

09:01AM 20 SUGGESTING HE CAN'T BE ASKED ABOUT THAT.

09:01AM 21 I JUST DON'T THINK THAT IT'S THE SAME ISSUE AS HIS ANSWER

09:01AM 22 WHEN HE'S ASKED, WHY DID YOU RESIGN FROM THE COMPANY?

09:01AM 23 AND I CERTAINLY DON'T THINK HIS ADDITIONAL TESTIMONY TEN

09:01AM 24 PAGES LATER IN THIS DEPOSITION IS NECESSARY UNDER RULE 106 TO

09:01AM 25 AVOID LEAVING THE JURY WITH A MISUNDERSTANDING OF HIS ANSWER

09:01AM 1 TO, WHY DID YOU RESIGN?

09:01AM 2 THE COURT: I SEE. IT'S MORE A QUESTION OF TIMING

09:01AM 3 IS WHAT I HEAR YOU SAYING.

09:01AM 4 YOUR PREFERENCE IS NOT TO HAVE THIS COME IN WITH THE

09:01AM 5 INTIMACY OF YOUR PRIOR INCONSISTENT STATEMENT, BUT I HEAR YOU

09:01AM 6 SAYING YOU RECOGNIZE THAT MR. BOSTIC, SHOULD HE DECIDE ON

09:01AM 7 REDIRECT, TO INTRODUCE THIS, YOU WOULD HAVE NO OBJECTION.

09:01AM 8 MS. SCHURICHT: I THINK IF IT'S -- UNDER THE RULES,

09:01AM 9 IF WE INTRODUCE PRIOR INCONSISTENT STATEMENTS, IF THERE IS A

09:02AM 10 PRIOR CONSISTENT STATEMENT, THE RULE AUTHORIZES ITS ADMISSION.

09:02AM 11 THE COURT: AND THEN THE NINTH CIRCUIT, AS YOU TOLD

09:02AM 12 ME, THE NINTH CIRCUIT TAKES A LIBERAL VIEW. THOSE DON'T HAVE

09:02AM 13 TO BE PER SE AND BLACK AND WHITE INCONSISTENT, BUT THERE'S SOME

09:02AM 14 LATITUDE IN THAT.

09:02AM 15 MS. SCHURICHT: YES, THERE'S A HIGH DEGREE OF

09:02AM 16 FLEXIBILITY.

09:02AM 17 THE COURT: RIGHT. AND DO YOU THINK -- I'M SORRY TO

09:02AM 18 INTERRUPT YOU.

09:02AM 19 BUT DO YOU THINK THAT THIS -- MR. BOSTIC'S EXCERPT WOULD

09:02AM 20 FALL IN THAT CATEGORY?

09:02AM 21 MS. SCHURICHT: SO --

09:02AM 22 THE COURT: I'M ASKING YOU TO CONCEDE SOMETHING.

09:02AM 23 MS. SCHURICHT: I KNOW. I UNDERSTAND THAT.

09:02AM 24 I GUESS MY -- IF THERE'S A LINE OF QUESTIONING THAT WAS

09:02AM 25 ASKED ON DIRECT EXAMINATION, IF WE THEN FOLLOW UP ON IT IN

09:02AM 1 CROSS-EXAMINATION, IT'S WITHIN THE SCOPE, I THINK HE HAS AN  
09:02AM 2 OPPORTUNITY TO PROBE THAT ISSUE FURTHER.

09:02AM 3 I'M NOT -- I DON'T THINK THAT THIS IS NECESSARILY  
09:03AM 4 INCONSISTENT WITH THE PRECISE ANSWER THAT HE GAVE SUCH THAT WE  
09:03AM 5 NEED TO, AGAIN, EXPAND OUR CLIP.

09:03AM 6 THE COURT: SURE. AND I APOLOGIZE. I DIDN'T MEAN  
09:03AM 7 TO PUT YOU ON THE SPOT WHERE YOU WERE GOING TO MAKE A  
09:03AM 8 CONCESSION ON THE RECORD HERE ABOUT A PIECE OF EVIDENCE AND  
09:03AM 9 OTHERWISE NOT PRESERVE ANY OBJECTION YOU MIGHT HAVE.

09:03AM 10 BUT I RAISE THE POINT, AS I SAID, TIMING IS WHAT IT IS.  
09:03AM 11 MY SENSE IS THE DEFENSE OBJECTS TO THE 106 COMING IN AT THE  
09:03AM 12 SAME TIME AS THE INCONSISTENT STATEMENT.

09:03AM 13 YOU RECOGNIZE THAT THE GOVERNMENT HAS, OR AN OPPOSING  
09:03AM 14 PARTY HAS THE OPPORTUNITY TO REHABILITATE, AS IT USED TO BE  
09:03AM 15 CALLED, AND YOU RECOGNIZE THE RULES PERMIT THAT?

09:03AM 16 SOMETHING ELSE?

09:03AM 17 MS. SCHURICHT: I'LL JUST SAY I THINK THE QUESTION  
09:03AM 18 ON WHETHER AN ADDITIONAL PIECE OF THE TRANSCRIPT CAN COME IN IN  
09:03AM 19 RESPONSE TO THE PRIOR INCONSISTENT STATEMENT, THE QUESTION  
09:04AM 20 REALLY IS WHAT THE ISSUE IS, WHAT THE TOPIC IS THAT IS BEING  
09:04AM 21 DISCUSSED IN THAT STATEMENT.

09:04AM 22 SO IN THIS INSTANCE IT'S THE REASONS FOR DR. ROSENDORFF'S  
09:04AM 23 RESIGNATION. IT'S NOT HIS, HIS DESIRE TO BE REMOVED FROM THE  
09:04AM 24 CLIA LICENSE.

09:04AM 25 HE COULD HAVE SAID, IN RESPONSE TO THAT DEPOSITION

09:04AM 1           QUESTION, I RESIGNED BECAUSE I WAS UNCOMFORTABLE BEING ON THE  
09:04AM 2           CLIA LICENSE, AND HERE ARE THE REASONS THAT I WAS UNCOMFORTABLE  
09:04AM 3           BEING ON THE CLIA LICENSE.

09:04AM 4           INSTEAD, HE REFERRED SOLELY TO PROFICIENCY TESTING.

09:04AM 5           AND SO I THINK IF WE THINK ABOUT THE TOPICS AS HIS REASONS  
09:04AM 6           FOR RESIGNING, IT IS A SEPARATE, DISCRETE TOPIC FROM THESE  
09:04AM 7           OTHER CONCERNs ABOUT THE LICENSE OF THE LAB.

09:04AM 8           THE COURT: OKAY.

09:04AM 9           MR. BOSTIC: ON THAT, YOUR HONOR, IF THE LAW TELLS  
09:04AM 10          US NOT TO TAKE AN OVERLY TECHNICAL READ OF WHAT IS CONSISTENT  
09:04AM 11          AND WHAT IS INCONSISTENT, THEN THAT'S A DISTINCTION WITHOUT A  
09:04AM 12          DIFFERENCE.

09:04AM 13          DR. ROSENDORFF TESTIFIED WHEN HE WAS ON THE STAND IN THIS  
09:04AM 14          TRIAL THE DAY BEFORE YESTERDAY THAT WHEN HE ASKED TO BE TAKEN  
09:05AM 15          OFF OF THE CLIA LICENSE, I'M PARAPHRASING, BUT THAT WAS  
09:05AM 16          ESSENTIALLY THE SAME THING AS HIM RESIGNING FROM HIS POSITION  
09:05AM 17          AS LAB DIRECTOR WHICH REQUIRED HIM TO BE ON THAT CLIA LICENSE.

09:05AM 18          SO WE ARE TALKING ABOUT THE SAME TOPIC HERE.

09:05AM 19          I DON'T KNOW WHY WHEN HE WAS FIRST ASKED THAT QUESTION HE  
09:05AM 20          DIDN'T INCLUDE THESE TOPICS IN HIS INITIAL ANSWER.

09:05AM 21          BUT WHEN, SO SOON AFTER THAT FIRST ANSWER, HE THEN IS  
09:05AM 22          GIVEN AN OPPORTUNITY AND TAKES IT TO PROVIDE A MORE FULSOME  
09:05AM 23          EXPLANATION, THE QUESTION BECOMES, IS THAT FIRST STATEMENT  
09:05AM 24          ACTUALLY INCONSISTENT? HOW BROADLY SHOULD WE LOOK AT HIS PRIOR  
09:05AM 25          TESTIMONY?

09:05AM 1 AND HERE I THINK WHERE IT FOLLOWS IN SUCH CLOSE PROXIMITY,

09:05AM 2 NOT ONLY IS IT ADMISSIBLE UNDER THE RULE 104 PRIOR INCONSISTENT

09:05AM 3 STATEMENT BUT IT ACTUALLY SHOULD COME IN UNDER RULE 106 BECAUSE

09:05AM 4 THIS WAS ALL ADDRESSING THE SAME TOPIC DURING THAT DEPOSITION.

09:05AM 5 AND WHILE THE GOVERNMENT IS HAPPY TO FIX ANY

09:06AM 6 MISUNDERSTANDING ON THE PART OF THE JURY DURING REDIRECT,

09:06AM 7 THERE'S NO WAY THAT THEY SHOULD HAVE TO WAIT SEVERAL DAYS TO

09:06AM 8 HAVE THAT MISIMPRESSION CLEARED UP.

09:06AM 9 THE COURT: OKAY. THANK YOU.

09:06AM 10 ANYTHING FURTHER?

09:06AM 11 MS. SCHURICHT: NOTHING ON THE SUBSTANCE OF THE

09:06AM 12 RULES, YOUR HONOR.

09:06AM 13 I WOULD JUST SAY AT A MINIMUM, I THINK IT WOULD BE

09:06AM 14 APPROPRIATE FOR US TO INTRODUCE THE EXCERPTS THAT WE'VE

09:06AM 15 IDENTIFIED, ASSUMING THERE'S A SUFFICIENT INCONSISTENCY, AND IF

09:06AM 16 THE GOVERNMENT FEELS THE NEED TO SUPPLEMENT THAT ON REDIRECT, I

09:06AM 17 THINK THAT'S AN APPROPRIATE PROCEDURE.

09:06AM 18 THE COURT: OKAY.

09:06AM 19 MR. BOSTIC: I THINK THERE WERE TWO MORE EXCERPTS

09:06AM 20 THAT THE DEFENSE THOUGHT THERE WAS ALREADY A SUFFICIENT

09:06AM 21 INCONSISTENCY THAT THEY'RE READY TO INTRODUCE.

09:06AM 22 I'M NOT SURE IF NOW WOULD BE A GOOD TIME TO DISCUSS THOSE

09:06AM 23 OR IF THERE WILL BE ANOTHER OPPORTUNITY, BUT THE GOVERNMENT

09:06AM 24 WOULD LIKE TO ADDRESS THOSE WITH THE COURT IF THAT'S THE

09:06AM 25 DEFENSE'S POSITION.

09:06AM 1 THE COURT: SHOULD WE DO THAT NOW OR DO YOU WANT  
09:06AM 2 SOME TIME TO MEET AND CONFER? IT'S ABOUT TEN AFTER 9:00 NOW.  
09:06AM 3 MS. SCHURICHT: DO YOU MIND JUST TELLING ME THE  
09:07AM 4 NUMBERS FOR THEM --  
09:07AM 5 THE COURT: LET'S -- LET ME DO THIS. LET ME HAVE  
09:07AM 6 YOUR CONVERSATION, I'LL ASK YOU TO MEET AND CONFER ON THAT IN A  
09:07AM 7 MOMENT.  
09:07AM 8 AS TO THIS ISSUE WITH THE CURRENT, I'LL PERMIT THE -- OF  
09:07AM 9 COURSE, FOLLOWING THE RULES, IF THE DEFENSE WISHES TO INTRODUCE  
09:07AM 10 28052F AS AN INCONSISTENT STATEMENT, I'LL PERMIT THAT.  
09:07AM 11 IS IT YOUR DESIRE TO PROVIDE A VIDEO OF THIS?  
09:07AM 12 MS. SCHURICHT: YES. WE HAVE THEM ALL CUED UP.  
09:07AM 13 THE COURT: OKAY.  
09:07AM 14 MS. SCHURICHT: AND THEY'RE CURRENTLY PREPARED WITH  
09:07AM 15 THE ROLLING SCRIPT, BUT THAT'S EASILY REMOVABLE.  
09:07AM 16 THE COURT: GREAT. AND LET ME SAY THAT MY  
09:07AM 17 PREFERENCE IS TO REMOVE THE ROLLING SCRIPT SUCH THAT I DON'T  
09:07AM 18 HAVE TO ADVISE THE JURY THAT -- WHAT WE ALL KNOW IS THAT THE  
09:08AM 19 STATEMENTS, THE SPOKEN WORDS ARE WHAT IS EVIDENCE, NOT THE  
09:08AM 20 TRANSCRIPT. I WOULD JUST AS SOON AVOID THAT WHOLE ISSUE IF WE  
09:08AM 21 CAN.  
09:08AM 22 MS. SCHURICHT: SURE. I SHOULD MAKE ONE THING  
09:08AM 23 CLEAR, WHICH IS THAT WE HAVE CORRESPONDING TRANSCRIPT EXCERPTS  
09:08AM 24 THAT WE'VE CREATED ALONG WITH THE VIDEO CLIPS, SO WE WOULD SEEK  
09:08AM 25 TO ADMIT AND THEN PLAY FOR THE JURY THE VIDEO, AND THEN WE

09:08AM 1 DON'T NEED TO PUBLISH THE TRANSCRIPT EXCERPTS AT THE SAME TIME,

09:08AM 2 BUT WE WOULD LIKE TO ADMIT THAT INTO EVIDENCE SIMPLY SO THE

09:08AM 3 JURY HAS IT WITH THEM WHILE DELIBERATING, GIVEN THE KIND OF

09:08AM 4 LOGISTICAL CHALLENGE OF COMING BACK IN TO RE-WATCH A VERY SHORT

09:08AM 5 VIDEO CLIP.

09:08AM 6 THE COURT: ARE YOU SEEKING TO INTRODUCE THE VIDEO

09:08AM 7 AS WELL?

09:08AM 8 MS. SCHURICHT: YES.

09:08AM 9 THE COURT: SO IF THE COURT ALLOWED THE VIDEO TO

09:08AM 10 COME IN WITH THE TRANSCRIPT ON IT, WOULD THAT SOLVE THE PROBLEM

09:08AM 11 OF YOUR TRANSCRIPT?

09:08AM 12 MS. SCHURICHT: OH, WITH THE ROLLING SCRIPT?

09:09AM 13 THE COURT: RIGHT.

09:09AM 14 MS. SCHURICHT: I THINK IT WOULD STILL BE USEFUL FOR

09:09AM 15 THE JURY TO HAVE THE TRANSCRIPT EXCERPTS IN EVIDENCE SO THAT

09:09AM 16 THEY COULD REVIEW THEM DURING DELIBERATIONS.

09:09AM 17 THE ROLLING SCRIPT I THINK IS HELPFUL IF THERE'S ANY

09:09AM 18 DIFFICULT UNDERSTANDING THE VIDEO --

09:09AM 19 THE COURT: OKAY.

09:09AM 20 MS. SCHURICHT: BUT I DO THINK WE WOULD ADMIT BOTH.

09:09AM 21 THE COURT: OKAY.

09:09AM 22 MR. BOSTIC: I'LL DEFER TO THE COURT ON THAT ISSUE.

09:09AM 23 AND I'M HAPPY TO MEET WITH THE DEFENSE ON THE REMAINING

09:09AM 24 CLIPS.

09:09AM 25 THE COURT: GREAT. LET ME ASK YOU TO DO THAT,

09:09AM 1 PLEASE, TO MEET ON THE REMAINING CLIPS.

09:09AM 2 DO YOU ANTICIPATE THAT THOSE WILL BE AN ISSUE TODAY? I'M

09:09AM 3 SURE YOU'RE GOING TO FINISH YOUR CROSS-EXAMINATION OF THIS

09:09AM 4 WITNESS TODAY, LIKELY BEFORE NOON?

09:09AM 5 (LAUGHTER.)

09:09AM 6 MS. SCHURICHT: YEAH, GIVEN THE PACING THIS MORNING,

09:09AM 7 PROBABLY IN AN HOUR.

09:09AM 8 THE COURT: I'M ASKING YOU TO CONCEDE THINGS AGAIN,

09:09AM 9 AREN'T I? I'M SORRY. I'M NOT GOING TO DO THAT AGAIN.

09:09AM 10 SO WHY DON'T YOU MEET AND CONFER ON THESE OTHERS IF YOU

09:09AM 11 CAN.

09:09AM 12 AS FOR THE ISSUES TODAY ON THIS ONE, AND I'LL --

09:10AM 13 MR. BOSTIC, I'M NOT GOING TO HAVE THAT PLAYED NOW, BUT IF YOU

09:10AM 14 WISH TO INTRODUCE THAT IN REDIRECT, YOU'LL BE PERMITTED TO DO

09:10AM 15 SO.

09:10AM 16 MR. BOSTIC: UNDERSTOOD. THANK YOU, YOUR HONOR.

09:10AM 17 THE COURT: OKAY.

09:10AM 18 MS. SCHURICHT: THANK YOU.

09:10AM 19 THE COURT: OKAY. WE'RE GOING TO PASS OUT OUR COLOR

09:10AM 20 SHEETS NOW, AND YOU CAN LOOK AT THEM.

09:10AM 21 MR. COOPERSMITH.

09:10AM 22 MR. COOPERSMITH: YEAH, ONE OTHER MATTER LEFT OVER

09:10AM 23 FROM WEDNESDAY IF I COULD JUST BRIEFLY HAVE YOUR ATTENTION?

09:10AM 24 THE COURT: SURE.

09:10AM 25 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

09:10AM 1 THIS HAS TO DO WITH THE CLIA REGULATIONS.

09:10AM 2 THE EXHIBIT NUMBER WAS 7603DD, AND IT WAS A SET OF CLIA

09:10AM 3 REGULATIONS THAT DEALT WITH THE DUTIES OF A LAB DIRECTOR AT A

09:10AM 4 CLIA LABORATORY.

09:10AM 5 AND YOU MIGHT REMEMBER WE DISCUSSED WITH YOUR HONOR ON

09:10AM 6 WEDNESDAY THE COURT'S CONCERNS ABOUT ADMITTING REGULATIONS, AND

09:10AM 7 THE COURT SUGGESTED THAT MAYBE IT WOULD BE A DEMONSTRATIVE.

09:11AM 8 YOU HAVEN'T RULED ON WHETHER THAT'S PROPER, EITHER.

09:11AM 9 BUT IN THE MEANTIME, WE HAVE PREPARED A DEMONSTRATIVE. I

09:11AM 10 HAVE GIVEN A COPY TO MR. BOSTIC, AND IF I COULD HAND THAT UP TO

09:11AM 11 YOUR HONOR.

09:11AM 12 THE COURT: SURE.

09:11AM 13 MR. COOPERSMITH: WHAT WE DID WAS TRY TO PARE IT

09:11AM 14 DOWN TO THE BARE MINIMUM OF WHAT WE THINK IS NECESSARY IN THE

09:11AM 15 REGULATIONS.

09:11AM 16 THE COURT: ABSOLUTELY. OKAY. LET ME SEE YOUR

09:11AM 17 WORK.

09:11AM 18 MR. COOPERSMITH: OKAY (HANDING).

09:11AM 19 (PAUSE IN PROCEEDINGS.)

09:11AM 20 THE COURT: MR. BOSTIC.

09:11AM 21 MR. BOSTIC: SO, YOUR HONOR, I SHARE THE COURT'S

09:11AM 22 CONCERNS ABOUT THE REGULATIONS COMING INTO EVIDENCE, BUT I HAVE

09:11AM 23 THE SAME CONCERNS ABOUT THEM BEING USED AS A DEMONSTRATIVE.

09:12AM 24 I THINK THE DISTINCTION BETWEEN WHAT IS IN EVIDENCE AND

09:12AM 25 WHAT IS A DEMONSTRATIVE MATTERS A GREAT DEAL TO JURISTS, BUT TO

09:12AM 1 JURORS I THINK THAT HAVING THE LAW DISPLAYED ON A SCREEN IN  
09:12AM 2 FRONT OF THEM CARRIES SERIOUS RISK OF CONFUSING THE JURY AS TO  
09:12AM 3 WHAT THEY'RE SUPPOSED TO APPLY IN THIS CASE AND WHY THEY'RE  
09:12AM 4 BEING SHOWN THIS.  
09:12AM 5 AND IT'S STILL NOT CLEAR TO ME WHY THEY WOULD BE SHOWN  
09:12AM 6 REGULATIONS THAT IMPOSE OBLIGATIONS ON THE LABORATORY DIRECTOR.  
09:12AM 7 THE DANGER IS, OF COURSE, THAT MR. BALWANI IS ON TRIAL FOR  
09:12AM 8 WIRE FRAUD AND CONSPIRACY HERE, AND THOSE CHARGES RELATE TO  
09:12AM 9 ALLEGATIONS THAT HE KNOWINGLY DEFRAUDED PATIENTS BY CAUSING  
09:12AM 10 THEM TO RECEIVE TEST RESULTS THAT WERE NOT SUFFICIENTLY  
09:12AM 11 ACCURATE OR RELIABLE.  
09:12AM 12 WHEN THE JURY SEES REGULATIONS THAT SAY THE LAB DIRECTOR  
09:12AM 13 IS RESPONSIBLE FOR THE ACCURACY OF THE TESTS, THE RUNNING OF  
09:13AM 14 THE TESTS, THEY MIGHT MISTAKENLY BELIEVE THAT THAT MEANS THAT  
09:13AM 15 MR. BALWANI CANNOT BE FOUND GUILTY OF THE CHARGES.  
09:13AM 16 IF THAT'S NOT THE CASE LEGALLY, THEN WHY DO THEY NEED TO  
09:13AM 17 KNOW THAT THIS IS WHAT THE LAW PROVIDES? WHAT ARE THEY  
09:13AM 18 SUPPOSED TO DO WITH THIS?  
09:13AM 19 ARE THEY SUPPOSED TO DECIDE WHETHER THIS IS IN CONFLICT  
09:13AM 20 WITH THE CHARGES AGAINST THE DEFENDANT? THAT'S A LEGAL  
09:13AM 21 QUESTION.  
09:13AM 22 ARE THEY SUPPOSED TO WEIGH DR. ROSENDORFF'S CONDUCT  
09:13AM 23 AGAINST THE STANDARDS HERE?  
09:13AM 24 MR. COOPERSMITH SAID THE OTHER DAY THAT THE PURPOSE OF  
09:13AM 25 THIS IS TO ESTABLISH THAT DR. ROSENDORFF UNDERSTOOD HIS JOB

09:13AM 1 RESPONSIBILITIES.

09:13AM 2 BUT THERE'S NO SIGN THAT HE DIDN'T, AND HE IS OBVIOUSLY IN

09:13AM 3 THE BEST POSITION TO TESTIFY ABOUT WHAT THE POSITION OF LAB

09:13AM 4 DIRECTOR MEANT AT THERANOS, WHAT WAS WITHIN HIS PURVIEW, WHAT

09:13AM 5 WAS NOT, AND WHAT HE IT ON A DAILY BASIS. HE CAN TESTIFY ABOUT

09:13AM 6 THAT WITHOUT REFERENCE TO THE REGULATIONS, AND CERTAINLY

09:14AM 7 WITHOUT THE JURY SEEING AND SCRUTINIZING THE TEXT OF THE

09:14AM 8 REGULATIONS.

09:14AM 9 MR. COOPERSMITH: YOUR HONOR, A FEW THINGS.

09:14AM 10 FIRST OF ALL, IT IS IMPORTANT TO ESTABLISH WHAT EXACTLY

09:14AM 11 ARE DR. ROSENDORFF'S RESPONSIBILITIES AS THE LAB DIRECTOR.

09:14AM 12 AND AS I SAID THE OTHER DAY, AND I STICK TO THIS, WE'RE

09:14AM 13 NOT SEEKING TO PICK OR CHERRY PICK EXACTLY WHAT DR. ROSENDORFF

09:14AM 14 DID THAT IS IN VIOLATION OF THE REGULATIONS. IT'S JUST

09:14AM 15 ESTABLISHING A BASELINE THAT THIS IS WHAT THE REGULATIONS

09:14AM 16 PROVIDE, THIS IS WHAT A LAB DIRECTOR DOES.

09:14AM 17 BUT I WANT TO MENTION A COUPLE OF OTHER THINGS.

09:14AM 18 TO BRIEFLY REITERATE A POINT I MADE ON WEDNESDAY, THE

09:14AM 19 GOVERNMENT HAS ALREADY GOTTEN BOTH DR. ROSENDORFF, AND

09:14AM 20 DR. PANDORI BEFORE THAT, TO TESTIFY ABOUT WHAT THE DUTIES ARE

09:14AM 21 UNDER THE LAW FOR PROFICIENCY TESTING.

09:14AM 22 YOU KNOW, THERE DIDN'T SEEM TO BE A CONCERN ON THE

09:14AM 23 GOVERNMENT'S PART THAT THAT WAS GOING TO CONFUSE THE JURY ABOUT

09:14AM 24 THAT.

09:14AM 25 THE COURT: I'M SORRY TO INTERRUPT YOU. CAN YOU

09:15AM 1 HELP ME WITH THAT?

09:15AM 2 THEY INTRODUCED EVIDENCE OF THE DUTIES UNDER THE LAW?

09:15AM 3 DID THEY INTRODUCE THE LAW IN THEIR CASE?

09:15AM 4 MR. COOPERSMITH: THEY INTRODUCED TESTIMONY THAT IN

09:15AM 5 THE VIEW OF DR. PANDORI AND DR. ROSENDORFF, THE LAW REQUIRED

09:15AM 6 CERTAIN THINGS FOR PROFICIENCY TESTING, NAMELY, IT REQUIRED

09:15AM 7 THEM TO REPORT ON THE PRIMARY METHODS.

09:15AM 8 THE COURT: SURE.

09:15AM 9 MR. COOPERSMITH: THEY TESTIFIED THAT THE COMPANY

09:15AM 10 WAS NOT DOING PT ON THE PRIMARY METHODS, WHICH THEY AT SOME

09:15AM 11 POINT DEEMED TO BE THE EDISON METHOD, AND THEREFORE, THIS WAS A

09:15AM 12 PROBLEM AND A VIOLATION THAT THE COMPANY WAS COMMITTING.

09:15AM 13 AND I DID NOT HEAR ANY COMMENT FROM THE GOVERNMENT THAT

09:15AM 14 THAT WAS A DANGER OF CONFUSING THE JURY ABOUT WHETHER THE JURY

09:15AM 15 WOULD THINK THAT MR. BALWANI IS GUILTY OF SOMETHING BECAUSE THE

09:15AM 16 COMPANY DIDN'T FOLLOW THE LAW ON PT TESTING.

09:15AM 17 THE COURT: DID THE GOVERNMENT INTRODUCE EVIDENCE OF

09:15AM 18 THE REGULATIONS EITHER AS A DEMONSTRATIVE OR SEEK TO INTRODUCE

09:15AM 19 THE REGULATIONS IN THAT EXAMINATION?

09:15AM 20 MR. COOPERSMITH: THEY DID NOT, YOUR HONOR.

09:16AM 21 HOWEVER, I THINK AUTHORITATIVE TESTIMONY FROM TWO

09:16AM 22 LABORATORY DIRECTORS WHO ARE QUALIFIED AS SUCH IS TANTAMOUNT TO

09:16AM 23 THE SAME THING.

09:16AM 24 BUT I WANT TO --

09:16AM 25 THE COURT: SO WOULDN'T THAT APPLY TO YOUR

09:16AM 1 EXAMINATION, THAT YOU ASKED THEM THE SAME QUESTIONS AND THEY  
09:16AM 2 RESPOND WITH THEIR SAME OPINIONS, OR IN THIS CASE  
09:16AM 3 DR. ROSENDORFF'S SAME OPINIONS CONCURRENT WITH HOW HE RESPONDED  
09:16AM 4 TO THE GOVERNMENT'S? ISN'T THAT THE SAME THING?  
09:16AM 5 MR. COOPERSMITH: I THINK THE FACT THAT THE  
09:16AM 6 GOVERNMENT CHOSE NOT TO INTRODUCE THE REGULATIONS, THEY DIDN'T  
09:16AM 7 OFFER ANYTHING, SHOULDN'T GOVERN HOW WE PROCEED.  
09:16AM 8 AND THEY JUST NEVER OFFERED THE EVIDENCE. AND THERE WAS  
09:16AM 9 NOTHING STOPPING THEM FROM DOING THAT.  
09:16AM 10 BUT I WANT TO GO TO A LARGER POINT, YOUR HONOR, WHICH IS A  
09:16AM 11 REAL CONCERN TO THE DEFENSE, AND THAT IS, THE GOVERNMENT HAS  
09:16AM 12 ACTUALLY FILED AN AFFIRMATIVE MOTION IN LIMINE ON THIS POINT.  
09:16AM 13 THEY WANT TO INTRODUCE A CMS INSPECTION REPORT FROM THE  
09:16AM 14 INSPECTION. YOUR HONOR MIGHT RECALL THAT WAS DONE AT THERANOS  
09:16AM 15 IN SEPTEMBER, STARTING IN SEPTEMBER OF 2015.  
09:17AM 16 THEY WANT TO INTRODUCE AN INSPECTION REPORT THAT IS  
09:17AM 17 CHOCK-FULL OF ONE ALLEGED REGULATORY VIOLATION AFTER ANOTHER  
09:17AM 18 AND IT QUOTES THE REGULATIONS AND IT CITES THE REGULATIONS.  
09:17AM 19 AND THE CMS REPORT ITSELF ACTUALLY QUOTES SOME OF THE SAME  
09:17AM 20 LABORATORY DIRECTOR REGULATIONS I THINK WE'RE TRYING TO ADMIT,  
09:17AM 21 BUT IT QUOTES A LOT OF OTHER REGULATIONS WHICH CMS IN THEIR  
09:17AM 22 VIEW BELIEVED THERANOS WAS VIOLATING.  
09:17AM 23 AND I KNOW THAT IN THE HOLMES TRIAL YOUR HONOR, IN CLOSING  
09:17AM 24 INSTRUCTIONS, PROVIDED INSTRUCTIONS TO THE JURY THAT THE JURY  
09:17AM 25 SHOULD NOT CONSIDER VIOLATIONS OF THE CIVIL REGULATIONS AS

09:17AM 1 EVIDENCE OF ELEMENTS OF THE CRIME. I DO THINK THAT IS AN  
09:17AM 2 APPROPRIATE INSTRUCTION.

09:17AM 3 BUT WHEN THE GOVERNMENT IS SEEKING TO INTRODUCE A SET OF  
09:17AM 4 REGULATIONS THAT ARE QUOTED VERBATIM WITH CITATIONS IN THE CMS  
09:17AM 5 REPORT, IT DOESN'T, IT DOESN'T MAKE SENSE TO ME THAT THEY'RE  
09:17AM 6 TRYING TO THEN EXCLUDE OUR MUCH MORE MODEST EFFORT TO SHOW WHAT  
09:18AM 7 THE BASIC DUTIES OF A LAB DIRECTOR ARE BY REFERENCE TO THE  
09:18AM 8 REGULATIONS.

09:18AM 9 AND IF THE GOVERNMENT IS REALLY TAKING THIS POSITION THAT  
09:18AM 10 THESE REGULATIONS ARE GOING TO CONFUSE THE JURY, I DON'T THINK  
09:18AM 11 THE CMS REPORT SHOULD COME IN AT ALL BECAUSE IT'S JUST  
09:18AM 12 CHOCK-FULL OF THESE REGULATIONS WITH CITATIONS.

09:18AM 13 MR. BOSTIC: SO, YOUR HONOR, THE POINT OF THE CMS  
09:18AM 14 REPORT AS A PIECE OF EVIDENCE IN THIS CASE IS NOT FOR THE TEXT  
09:18AM 15 OF WHAT THE REGULATIONS REQUIRE, WHAT OBLIGATIONS THE LAW  
09:18AM 16 IMPOSES.

09:18AM 17 THE POINT OF THAT IS THAT THAT DOCUMENT PROVIDED NOTICE TO  
09:18AM 18 THE DEFENDANT ABOUT SERIOUS PROBLEMS AT THE LAB, AND IT ALSO  
09:18AM 19 SERVES AS DOCUMENTATION THAT THOSE PROBLEMATIC CONDITIONS WERE  
09:18AM 20 PRESENT AT THERANOS.

09:18AM 21 THIS ISSUE HAS BEEN LITIGATED BEFORE, IT SOUNDS LIKE IT  
09:18AM 22 MIGHT BE LITIGATED AGAIN IN THIS CASE, AND I DON'T WANT US TO  
09:18AM 23 GET SIDE-TRACKED INTO TALKING ABOUT THAT, ALTHOUGH I'M HAPPY TO  
09:18AM 24 ANSWER ANY QUESTIONS THAT THE COURT MIGHT HAVE.

09:18AM 25 WHEN IT COMES TO INTRODUCING THE TEXT OF THE REGULATIONS

09:18AM 1 ALONE AS A DEMONSTRATIVE OR AS A PIECE OF EVIDENCE, THE  
09:18AM 2 GOVERNMENT HAS NOT TRIED TO DO THAT, AND THAT WAS A DELIBERATE  
09:19AM 3 DECISION.

09:19AM 4 THE GOVERNMENT ALSO HAS NOT ASKED, I DON'T BELIEVE, ANY  
09:19AM 5 QUESTIONS DIRECTLY ELICITING TESTIMONY ABOUT WHAT THE LAW  
09:19AM 6 REQUIRED.

09:19AM 7 WE DID ASK QUESTIONS ABOUT WHY LABORATORY DIRECTORS TOOK  
09:19AM 8 CERTAIN ACTIONS, WHY THEY PERCEIVED CERTAIN PROBLEMS AS  
09:19AM 9 PROBLEMS, AND IN ANSWERING, THEY REFERRED TO THEIR LEGAL  
09:19AM 10 OBLIGATIONS.

09:19AM 11 BUT THAT'S NOT THE SAME THING AS PUTTING THE LAW IN FRONT  
09:19AM 12 OF THE JURY.

09:19AM 13 IF WHAT THE DEFENSE IS SEEKING TO DO IS A RESPONSE TO  
09:19AM 14 THAT, THEN THEY SHOULD PROCEED IN A SIMILAR MANNER. ASKING  
09:19AM 15 QUESTIONS TO DR. ROSENDORFF ABOUT HIS JOB RESPONSIBILITIES AND  
09:19AM 16 THE SCOPE OF HIS JOB AT THERANOS, THAT IS A MATCH FOR WHAT THE  
09:19AM 17 GOVERNMENT HAS DONE.

09:19AM 18 PUTTING THE LAW IN FRONT OF THE JURY CARRIES A 403 RISK.

09:19AM 19 MR. COOPERSMITH: YOUR HONOR, AS I SAID ON  
09:19AM 20 WEDNESDAY, OUR PREFERENCE WOULD BE TO INTRODUCE THE FULL  
09:19AM 21 EXHIBIT, 7603DD.

09:19AM 22 AS YOU'VE SEEN, WE'VE PREPARED A DEMONSTRATIVE. I THINK  
09:20AM 23 IT'S A RELATIVELY BRIEFER EXCERPT OF WHAT WE THINK ESTABLISHES  
09:20AM 24 THE BASE LINE OF THE LAB DIRECTOR'S RESPONSIBILITIES.

09:20AM 25 THIS IS VERY MUCH AT ISSUE IN DR. ROSENDORFF'S TESTIMONY.

09:20AM 1 I THINK IT'S IMPORTANT THAT THE JURY UNDERSTANDS WHAT IS A LAB  
09:20AM 2 DIRECTOR SUPPOSED TO DO AND --  
09:20AM 3 THE COURT: SO YOU WANT THE JURY THEN TO TAKE THE  
09:20AM 4 DEMONSTRATIVE THEN AS THE LAW, AND TO MEASURE DR. ROSENDORFF'S  
09:20AM 5 TESTIMONY AS TO THE DEMONSTRATIVE? IT SOUNDS LIKE THAT'S WHAT  
09:20AM 6 YOU'RE ASKING THEM TO DO.  
09:20AM 7 MR. COOPERSMITH: YOUR HONOR, I JUST THINK THAT I'M  
09:20AM 8 TRYING TO ESTABLISH, WHAT IS THE JOB OF A LAB DIRECTOR? WHAT  
09:20AM 9 ARE HIS DUTIES? RIGHT?  
09:20AM 10 AND IF DR. ROSENDORFF WANTS TO SAY, YES, I UNDERSTAND THIS  
09:20AM 11 IS WHAT THE LAW REQUIRES MY DUTIES TO BE, BUT I DIDN'T FOLLOW  
09:20AM 12 MY DUTIES, I SUPPOSE HE'S FREE TO DO THAT.  
09:20AM 13 BUT THAT'S IMPORTANT TO ESTABLISH, WHAT IS THE JOB OF THE  
09:20AM 14 LAB DIRECTOR? AND I THINK WE'RE ENTITLED TO SHOW THAT WITH  
09:20AM 15 EVIDENCE AND NOT JUST RELY ON THE WORDS OF DR. ROSENDORFF'S --  
09:20AM 16 WORDS FROM HIS OWN MOUTH, WHICH, YOU KNOW, FRANKLY WE DON'T  
09:20AM 17 TRUST AS MUCH AS WHAT IS IN THE WRITTEN REGULATION.  
09:21AM 18 SO I THINK IT'S APPROPRIATE, ESPECIALLY GIVEN, AS I SAID,  
09:21AM 19 THE GOVERNMENT'S TESTIMONY THAT THEY ELICITED ON PT AND THEIR  
09:21AM 20 EFFORT, WHICH THEY ACTUALLY WON THAT RULING BEFORE YOUR HONOR,  
09:21AM 21 ON THE CMS REPORT, WHICH IS PUTTING THE LAW IN FRONT OF THE  
09:21AM 22 JURY.  
09:21AM 23 I MEAN, ONCE THE JURY HAS THE CMS REPORT, THEY HAVE ALL OF  
09:21AM 24 THE LAW, ALL OF THE REGULATIONS, JUST THE SAME AS PUTTING THE  
09:21AM 25 REGULATION IN FRONT OF THE JURY IS THE SAME THING, EXACTLY THE

09:21AM 1 SAME TEST, EXACTLY THE SAME CITATIONS.

09:21AM 2 THE COURT: WHAT TYPE OF -- IF I ALLOW THIS, WHAT

09:21AM 3 SHOULD I TELL THE JURY TO DO WITH THESE REGULATIONS?

09:21AM 4 MR. COOPERSMITH: I THINK IT'S APPROPRIATE TO TELL

09:21AM 5 THE JURY THE SAME THING WE'RE HOPING THE COURT WILL TELL THE

09:21AM 6 JURY ABOUT THE GOVERNMENT'S REGULATORY VIOLATION EVIDENCE, AND

09:21AM 7 THAT IS THAT THESE REGULATORY VIOLATIONS ARE NOT TO BE

09:21AM 8 CONSIDERED TO -- FOR THE ELEMENTS OF THE OFFENSE, AND THEY'RE

09:21AM 9 ALSO NOT TO BE CONSIDERED FOR WHETHER DR. ROSENDORFF VIOLATED

09:21AM 10 THE CLIA REGULATION. THAT'S NOT A PART OF THE CASE.

09:21AM 11 BUT IT'S JUST SIMPLY TO ESTABLISH WHAT ARE THE DUTIES OF A

09:22AM 12 LAB DIRECTOR.

09:22AM 13 MR. BOSTIC: BUT WHY DOES THE JURY NEED TO KNOW WHAT

09:22AM 14 THE LEGAL DUTIES OF A LAB DIRECTOR ARE IF THEY'RE NOT MEANT TO

09:22AM 15 JUDGE DR. ROSENDORFF'S COMPLIANCE OR MISTAKENLY BELIEVE THAT

09:22AM 16 THESE REGULATIONS HAD THE EFFECT OF REMOVING ANY CULPABILITY

09:22AM 17 FROM THE DEFENDANT FOR THE CHARGES IN THIS CASE?

09:22AM 18 THE COURT: I THINK THAT'S THE PROBLEM THAT ARISES

09:22AM 19 WITH THIS.

09:22AM 20 I ASKED YOU TO PREPARE DEMONSTRATIVES, AND THANK YOU FOR

09:22AM 21 DOING THAT, IN RESPONSE TO THE COURT'S DECISION THAT I WASN'T

09:22AM 22 GOING TO ADMIT THE REGULATIONS THEMSELVES. I JUST THOUGHT THAT

09:22AM 23 WAS INAPPROPRIATE.

09:22AM 24 AND IN LOOKING AT THE DEMONSTRATIVES HERE, I'M NOT GOING

09:22AM 25 TO PRECLUDE YOU FROM ASKING THE DOCTOR HIS UNDERSTANDING OF HIS

09:22AM 1 OBLIGATIONS. IF HE DOESN'T REMEMBER THEM, YOU CAN REFRESH HIS  
09:22AM 2 RECOLLECTION WITH THESE.

09:22AM 3 IF HE TESTIFIES TO SOMETHING, TO A CONDUCT THAT HE DID,  
09:23AM 4 YOU CAN ASK HIM IF HE FEELS THAT'S PART OF HIS DUTIES, AND THEN  
09:23AM 5 YOU COULD PERHAPS SHOW THIS TO HIM, WITHOUT SHOWING IT TO THE  
09:23AM 6 JURY, TO HAVE HIS RECOLLECTION REFRESHED OR SOMETHING.

09:23AM 7 I DO THINK THAT THERE IS GREAT RISK IN CONFUSION IF THE  
09:23AM 8 JURY IS SHOWN REGULATIONS AND THEN ASKED TO NOT MAKE A DECISION  
09:23AM 9 ABOUT REGULATIONS AND HIS CONDUCT, THEN A JURY -- IT SEEMS LIKE  
09:23AM 10 WHAT YOU'RE DOING IS THAT YOU'RE PUTTING THE DOCTOR'S LEGAL  
09:23AM 11 PERFORMANCE AND POTENTIAL LIABILITIES IN FRONT OF THE JURY, AND  
09:23AM 12 THERE'S A DANGER IN THAT THAT CAUSES ME SOME CONCERN.

09:23AM 13 I RESPECT AND APPRECIATE ON CROSS-EXAMINATION YOU WANT TO  
09:23AM 14 TEST HIS MEMORY OF HIS DUTIES AND THE THINGS THAT HE WAS  
09:23AM 15 SUPPOSED TO DO AND DIDN'T DO ACCORDINGLY.

09:23AM 16 BUT TO HAVE A SEPARATE ISSUE ABOUT, WELL, YOU DID VIOLATE  
09:24AM 17 THIS REGULATION THEN, DIDN'T YOU? I JUST DON'T SEE THE  
09:24AM 18 RELEVANCE IN THAT.

09:24AM 19 I DO THINK THAT YOU HAVE -- IF YOU DISAGREE WITH HIS  
09:24AM 20 CONDUCT AND HOW HE HANDLED THINGS, YOU CERTAINLY CAN PROBE THAT  
09:24AM 21 AND CROSS-EXAMINE THAT AND ASK HIM IF HE REALLY DOES FEEL THAT  
09:24AM 22 THAT WAS WITHIN HIS PURVIEW OR HE FELL SHORT OF HIS  
09:24AM 23 RESPONSIBILITIES.

09:24AM 24 I'M NOT GOING TO PRECLUDE YOU AT ALL FROM CROSS-EXAMINING  
09:24AM 25 AND PROBING HIM ON THAT.

09:24AM 1 BUT I DO THINK THAT THERE IS SOME GREAT RISK IN PUTTING  
09:24AM 2 THE LAW ON HIS DUTIES IN FRONT OF THE JURY AND THEN THE  
09:24AM 3 TEMPTATION IS FOR THE JURY TO THEN MAKE SOME LEGAL CONCLUSIONS  
09:24AM 4 THAT THEY SHOULDN'T BE TASKED WITH.  
09:24AM 5 SO I'M NOT GOING TO ALLOW YOU TO USE THESE, AS YOU'VE  
09:24AM 6 PRESENTED THEM, TO THE JURY AS DEMONSTRATIVES.  
09:24AM 7 YOU MAY BE ABLE TO USE THEM FOR SOME OTHER PURPOSE IN YOUR  
09:24AM 8 EXAMINATION, AND WE'LL SEE WHERE THAT GOES.  
09:24AM 9 LET ME -- I THINK WE'VE PROVIDED YOU WITH THE SCHEDULES,  
09:25AM 10 AND WE'RE NOT GOING TO TALK ABOUT THAT NOW. YOU'LL NEED TO  
09:25AM 11 LOOK AT THOSE, I THINK, AND ABSORB THEM.  
09:25AM 12 I THINK ONE OF THE JURORS INDICATED SHE HAS AN APPOINTMENT  
09:25AM 13 SET FOR NEXT -- IS THE 28TH, I THINK? IS THAT RIGHT?  
09:25AM 14 I DON'T HAVE IT IN FRONT IT OF ME.  
09:25AM 15 OH, HERE IT IS. YES.  
09:25AM 16 (DISCUSSION OFF THE RECORD.)  
09:25AM 17 THE COURT: WE HAVE ONE JUROR WHO HAS PATIENTS  
09:25AM 18 SCHEDULED AND INFORMS THAT SHE'S BOOKED UNTIL THE END OF MAY.  
09:25AM 19 BUT LET'S LET YOU ABSORB THIS AND THEN AT THE BREAK MAYBE  
09:25AM 20 WE CAN HAVE SOME MORE CONVERSATION ON THAT.  
09:25AM 21 MR. COOPERSMITH: YES, YOUR HONOR.  
09:25AM 22 THE COURT: RIGHT.  
09:26AM 23 ARE WE READY TO GO? IS EVERYTHING CLEAR WITH THE WITNESS?  
09:26AM 24 MR. SCHENK: DR. ROSENDORFF TOOK A TEST THIS  
09:26AM 25 MORNING, AND THE TEST RESULT WAS NEGATIVE.

09:26AM 1 THE COURT: OKAY. THANK YOU. OKAY.

09:26AM 2 SHOULD WE BRING THE JURY IN THEN?

09:26AM 3 MR. COOPERSMITH: YES, YOUR HONOR.

09:26AM 4 IF I COULD TAKE A TWO MINUTE COMFORT BREAK, I WOULD

09:26AM 5 APPRECIATE THAT.

09:26AM 6 THE COURT: YES. EXACTLY.

09:26AM 7 (LAUGHTER.)

09:26AM 8 THE COURT: IT'S GOING TO TAKE US SOME TIME TO GET

09:26AM 9 THINGS ORGANIZED HERE, SO WE'LL BRING THEM IN THEN IN ABOUT

09:26AM 10 FIVE MINUTES.

09:26AM 11 MR. COOPERSMITH: THANK YOU.

09:26AM 12 MR. SCHENK: THANK YOU.

09:26AM 13 (RECESS FROM 9:26 A.M. UNTIL 9:36 A.M.)

09:36AM 14 (JURY IN AT 9:36 A.M.)

09:36AM 15 THE COURT: THANK YOU. GOOD MORNING. THANK YOU

09:36AM 16 AGAIN FOR YOUR COURTESY.

09:36AM 17 PLEASE BE SEATED.

09:36AM 18 WE'RE BACK ON THE RECORD IN THE BALWANI MATTER.

09:37AM 19 ALL COUNSEL ARE PRESENT. MR. -- THERE YOU ARE. ALL

09:37AM 20 COUNSEL ARE PRESENT. MR. BALWANI IS PRESENT.

09:37AM 21 OUR JURY AND ALTERNATES ARE PRESENT.

09:37AM 22 DR. ROSENDORFF HAS RETURNED TO THE STAND.

09:37AM 23 GOOD MORNING, LADIES AND GENTLEMEN. I'M SORRY FOR THE

09:37AM 24 DELAY. I HAD TO SPEAK WITH THE LAWYERS ABOUT SOME THINGS THIS

09:37AM 25 MORNING.

09:37AM 1 LET ME ASK YOU THAT QUESTION AGAIN. DURING OUR BREAK, HAS  
09:37AM 2 ANYONE HERE HAD OCCASION TO LEARN, DISCUSS, READ, OR SEE  
09:37AM 3 ANYTHING TO DO WITH THIS CASE? IF SO, PLEASE RAISE YOUR HAND.  
09:37AM 4 I SEE NO HANDS. THANK YOU FOR THAT.  
09:37AM 5 WE DID RECEIVE YOUR INFORMATION REGARDING AVAILABILITY FOR  
09:37AM 6 ADDITIONAL TIME, AND WE'VE COMPILED THAT IN SOME KIND OF A  
09:37AM 7 SPREADSHEET, AND WE'RE GOING TO DISCUSS THAT WITH COUNSEL TO  
09:37AM 8 SEE WHAT WE CAN DO.  
09:37AM 9 THANKS FOR THAT.  
09:37AM 10 WE'LL LET YOU KNOW WHEN AND IF WE CAN FILL SOME OF THOSE  
09:38AM 11 SPOTS.  
09:38AM 12 BEFORE -- MR. COOPERSMITH, BEFORE YOU BEGIN YOUR, OR  
09:38AM 13 CONTINUE WITH YOUR EXAMINATION, LADIES AND GENTLEMEN, I DID  
09:38AM 14 WANT TO -- I NEGLECTED TO ADVISE YOU OF A STIPULATION THAT THE  
09:38AM 15 PARTIES HAVE REACHED, AND I APOLOGIZE, I SHOULD HAVE DONE THIS  
09:38AM 16 LAST WEEK.  
09:38AM 17 BUT THE PARTIES DID REACH A STIPULATION AS TO SOME  
09:38AM 18 EVIDENCE IN THIS CASE.  
09:38AM 19 COUNSEL, MAY I READ THIS STIPULATION NOW? THIS IS  
09:38AM 20 DOCUMENT 1402.  
09:38AM 21 MR. COOPERSMITH: YES, YOUR HONOR. THANK YOU.  
09:38AM 22 MR. BOSTIC: YES, YOUR HONOR.  
09:38AM 23 THE COURT: THANK YOU.  
09:38AM 24 THE STIPULATION, LADIES AND GENTLEMEN, IS AS FOLLOWS: THE  
09:38AM 25 "WIRED" MAGAZINE ARTICLE INCLUDED AS A LINK IN TRIAL

09:38AM 1 EXHIBIT 20458 AND DISCUSSED DURING DR. PANDORI'S TESTIMONY WAS

09:39AM 2 PUBLISHED BY "WIRED" MAGAZINE ONLINE ON FEBRUARY 18TH, 2014.

09:39AM 3 DID I READ THAT STIPULATION ACCURATELY, MR. COOPERSMITH?

09:39AM 4 MR. COOPERSMITH: YES, YOUR HONOR.

09:39AM 5 MR. BOSTIC: YES, YOUR HONOR. THANK YOU.

09:39AM 6 THE COURT: ALL RIGHT. THANK YOU.

09:39AM 7 LADIES AND GENTLEMEN, THE PARTIES HAVE AGREED TO THESE

09:39AM 8 FACTS AS I'VE JUST READ THEM TO YOU. THOSE FACTS ARE NOW

09:39AM 9 CONCLUSIVELY ESTABLISHED AND THEY'RE PART OF THE RECORD IN THIS

09:39AM 10 MATTER.

09:39AM 11 THANK YOU.

09:39AM 12 MR. COOPERSMITH, ANYTHING FURTHER ON THIS?

09:39AM 13 MR. COOPERSMITH: NO, YOUR HONOR. THANK YOU.

09:39AM 14 THE COURT: MR. BOSTIC?

09:39AM 15 MR. BOSTIC: NO, YOUR HONOR. THANK YOU.

09:39AM 16 THE COURT: DO YOU HAVE QUESTIONS?

09:39AM 17 MR. COOPERSMITH: YES, YOUR HONOR. THANK YOU.

09:39AM 18 **(GOVERNMENT'S WITNESS, ADAM ROSENDORFF, PREVIOUSLY WAS**

09:39AM 19 **SWORN.)**

09:39AM 20 **CROSS-EXAMINATION (RESUMED)**

09:39AM 21 BY MR. COOPERSMITH:

09:39AM 22 Q. GOOD MORNING, AND WELCOME BACK, DR. ROSENDORFF.

09:39AM 23 A. GOOD MORNING.

09:39AM 24 Q. I JUST WANT TO BEGIN WHERE WE LEFT OFF ON WEDNESDAY, AND

09:39AM 25 THAT'S WITH THE RESPONSIBILITIES OF THE LAB DIRECTOR.

09:39AM 1 SO JUST TO REFRESH, YOU WERE THE LAB DIRECTOR AT THERANOS

09:39AM 2 DURING THE TIME THAT YOU WORKED THERE ONCE YOU BECAME THE LAB

09:40AM 3 DIRECTOR ON THE CLIA LICENSE; IS THAT CORRECT?

09:40AM 4 A. CORRECT.

09:40AM 5 Q. OKAY. AND YOU UNDERSTAND THAT AS LAB DIRECTOR, YOU HAD

09:40AM 6 CERTAIN DUTIES THAT WERE REQUIRED OF YOU AS LAB DIRECTOR; IS

09:40AM 7 THAT RIGHT?

09:40AM 8 A. UNDER THE CLIA REGULATIONS, YES.

09:40AM 9 Q. RIGHT. AND I JUST WANT TO GO THROUGH A FEW OF THOSE.

09:40AM 10 SO YOU UNDERSTAND THAT A LABORATORY THAT IS -- WELL, LET

09:40AM 11 ME STEP BACK FOR A MINUTE.

09:40AM 12 THE LABORATORY THAT YOU WERE RUNNING FROM THE FALL OF 2013

09:40AM 13 AND UNTIL YOU LEFT THERANOS, THAT WAS WHAT IS KNOWN AS A HIGH

09:40AM 14 COMPLEXITY LAB; IS THAT RIGHT?

09:40AM 15 A. CORRECT, CORRECT.

09:40AM 16 Q. AND A HIGH COMPLEXITY LAB IS WHERE THE LABORATORY CAN, IN

09:40AM 17 ADDITION TO RUNNING FDA APPROVED EQUIPMENT TO TEST BLOOD, ALSO

09:40AM 18 COULD RUN LABORATORY DEVELOPED TESTS?

09:40AM 19 A. CORRECT.

09:40AM 20 Q. AND THOSE ARE OFTEN CALLED LDT'S?

09:40AM 21 A. YES.

09:40AM 22 Q. AND LABORATORIES THAT YOU WERE FAMILIAR WITH, EVEN APART

09:40AM 23 FROM THERANOS, RUN LDT'S IN THEIR LAB; IS THAT RIGHT?

09:41AM 24 A. MANY DO, YES.

09:41AM 25 Q. AND THERE ARE CERTAIN PROCEDURES IF A LAB IS GOING TO RUN

09:41AM 1 LDT'S?

09:41AM 2 A. CORRECT.

09:41AM 3 Q. AND ONE SUCH PROCEDURE IS THAT THE LAB HAS TO BE LICENSED

09:41AM 4 AS A HIGH COMPLEXITY LAB?

09:41AM 5 A. CORRECT.

09:41AM 6 Q. SO IF A LAB IS A MODERATE COMPLEXITY LAB, IT COULDN'T RUN

09:41AM 7 LDT'S; IS THAT RIGHT?

09:41AM 8 A. I'M NOT SURE ON THAT POINT.

09:41AM 9 Q. OKAY. BUT AT LEAST YOU KNOW THAT IF A LAB WANTS -- GO

09:41AM 10 AHEAD, I'M SORRY.

09:41AM 11 A. IF YOU RUN EVEN ONE LDT, I THINK YOU IMMEDIATELY BECOME A

09:41AM 12 HIGH COMPLEXITY LABORATORY.

09:41AM 13 Q. RIGHT. AND THEN THE REGULATIONS ALSO REQUIRE THAT THE

09:41AM 14 LABORATORY DIRECTOR OF A HIGH COMPLEX LAB HAVE CERTAIN

09:41AM 15 QUALIFICATIONS; IS THAT RIGHT?

09:41AM 16 A. YES, YES.

09:41AM 17 Q. AND YOU MET THOSE QUALIFICATIONS?

09:41AM 18 A. YES.

09:41AM 19 Q. AND WHEN YOU STARTED WORKING AT THERANOS, YOU WERE

09:41AM 20 ACTUALLY MOVING FROM PENNSYLVANIA TO CALIFORNIA; RIGHT?

09:41AM 21 A. CORRECT.

09:41AM 22 Q. AND SO YOU HAD TO OBTAIN LICENSURE IN CALIFORNIA AS WELL?

09:41AM 23 A. MEDICAL LICENSURE, CORRECT.

09:41AM 24 Q. BECAUSE YOU WERE NEW TO THE STATE OF CALIFORNIA?

09:41AM 25 A. CORRECT.

09:41AM 1 Q. OKAY. SO IN ADDITION TO THE NEED TO HAVE A LABORATORY  
09:42AM 2 DIRECTOR QUALIFIED TO RUN A HIGH COMPLEXITY LAB, IS IT THE CASE  
09:42AM 3 THAT THE LABORATORY DIRECTOR HAS TO BE QUALIFIED TO MANAGE AND  
09:42AM 4 DIRECT LABORATORY PERSONNEL WHO ARE ACTUALLY RUNNING THE HIGH  
09:42AM 5 COMPLEXITY TESTS?

09:42AM 6 A. THE LABORATORY DIRECTOR IS RESPONSIBLE FOR ENSURING THAT  
09:42AM 7 SUFFICIENTLY TRAINED PERSONNEL ARE WORKING IN THE LAB AND THAT  
09:42AM 8 THEIR TRAINING AND COMPETENCY IS DOCUMENTED.

09:42AM 9 Q. OKAY. AND THAT'S THE LABORATORY DIRECTOR'S JOB?

09:42AM 10 A. IT FALLS UNDER THE LABORATORY DIRECTOR, BUT THEY WILL  
09:42AM 11 DELEGATE THIS, PARTICULARLY IN A LARGE LAB, THEY WILL DELEGATE  
09:42AM 12 THIS TO SUPERVISORS.

09:42AM 13 Q. AND YOU CAN RELY ON GENERAL SUPERVISORS AND TECHNICAL  
09:43AM 14 SUPERVISORS TO PERFORM SOME OF THOSE TASKS?

09:43AM 15 A. IDEALLY, YES.

09:43AM 16 Q. RIGHT. SUCH AS TRAINING TASKS?

09:43AM 17 A. CORRECT.

09:43AM 18 Q. BUT ULTIMATELY THE LAB DIRECTOR HAS TO OVERSEE THAT  
09:43AM 19 PROCESS; IS THAT RIGHT?

09:43AM 20 A. WELL, UNDER THE LAW, A LABORATORY DIRECTOR IS RESPONSIBLE  
09:43AM 21 FOR ABSOLUTELY EVERYTHING.

09:43AM 22 Q. RIGHT.

09:43AM 23 A. BUT IN ANY EVENT.

09:43AM 24 Q. DR. ROSENDORFF, THE LABORATORY DIRECTOR IS ALSO  
09:43AM 25 RESPONSIBLE FOR MAKING SURE THAT THE TESTS PERFORMED BY THE

09:43AM 1 LABORATORY, ARE PERFORMED ACCURATELY AND CORRECTLY; IS THAT  
09:43AM 2 RIGHT?  
09:43AM 3 A. I DON'T KNOW EXACTLY WHAT STATUTE YOU'RE REFERRING TO. IF  
09:43AM 4 YOU COULD POINT ME TO THE STATUTE.  
09:43AM 5 Q. CERTAINLY. AND IF IT WOULD HELP TO REFRESH, I CAN HAND UP  
09:43AM 6 SOMETHING TO YOU.  
09:43AM 7 MAY I APPROACH, YOUR HONOR?  
09:43AM 8 THE COURT: YES.  
09:43AM 9 MR. COOPERSMITH: (HANDING.)  
09:44AM 10 Q. DR. ROSENDORFF, I'VE HANDED YOU SOME EXCERPTS AND JUST TO  
09:44AM 11 GO THROUGH THOSE. THEY'RE NUMBERED AT THE TOP. AND THE ONE  
09:44AM 12 THAT I WAS REFERRING TO IN THE LAST QUESTION WAS ON PAGE 3 OF  
09:44AM 13 THE DOCUMENT THAT I'VE HANDED YOU.  
09:44AM 14 A. YES, YES.  
09:44AM 15 Q. AND COULD YOU SEE THAT IS NUMBERED 493.1145?  
09:44AM 16 A. YES.  
09:44AM 17 Q. AND LOOKING AT THAT, DOES THAT REFRESH YOUR MEMORY THAT  
09:44AM 18 ONE OF THE LAB DIRECTOR'S RESPONSIBILITIES IS TO RECORD AND  
09:44AM 19 REPORT TEST RESULTS PROMPTLY, ACCURATELY, AND PROFICIENTLY, AND  
09:44AM 20 FOR ENSURING COMPLIANCE WITH APPLICABLE REGULATIONS?  
09:44AM 21 A. THIS MEANS THAT THE REPORTING TESTS IS CONCORDANT WITH  
09:44AM 22 WHAT THE LABORATORY IS PUTTING OUT AS THE RESULT. THAT'S ALL  
09:44AM 23 THAT MEANS.  
09:44AM 24 Q. OKAY. BUT IT ALSO -- AM I RIGHT, THAT ONE OF THE LAB  
09:45AM 25 DIRECTOR'S RESPONSIBILITIES IS TO, IN THE COURSE OF OVERSEEING

09:45AM 1 THE LAB, TO MAKE SURE THE TESTS THAT ARE BEING CONDUCTED ARE  
09:45AM 2 PERFORMED ACCURATELY?

09:45AM 3 A. SO, AS I SAID YESTERDAY, IF THE LABORATORY IS IN VIOLATION  
09:45AM 4 OF ANY CMS REG SUCH THAT IT RESULTS IN JEOPARDY AND CLOSURE OF  
09:45AM 5 THE LAB, THE LABORATORY DIRECTOR AND OWNER ARE HELD JOINTLY  
09:45AM 6 LIABLE.

09:45AM 7 Q. YES. BUT IN TERMS OF THE RESPONSIBILITY BEFORE A  
09:45AM 8 VIOLATION OCCURS, IF ONE DOES, THE LABORATORY DIRECTOR HAS  
09:45AM 9 TO -- AS ONE OF THE DUTIES, HAS TO ENSURE THAT THE LABORATORY  
09:45AM 10 IS TESTING IN AN ACCURATE MANNER?

09:45AM 11 A. DOESN'T THE INDICATED SANCTIONS APPROVE WHO IS ULTIMATELY  
09:45AM 12 RESPONSIBLE IN THAT REGARD?

09:45AM 13 Q. FROM -- YOU GET TO A LABORATORY'S LAB DIRECTOR,  
09:45AM 14 DR. ROSENDORFF, AND FROM DAY ONE THAT YOU ARE LAB DIRECTOR,  
09:46AM 15 BEFORE ANYTHING HAPPENS, YOU KNOW THAT GOING IN THAT ONE OF  
09:46AM 16 YOUR JOBS IS TO DO EVERYTHING THAT YOU CAN TO MAKE SURE THE  
09:46AM 17 TESTS ARE ACCURATE; IS THAT CORRECT?

09:46AM 18 A. AND I DID.

09:46AM 19 Q. OKAY. YOU CAN PUT THAT ASIDE, DR. ROSENDORFF.

09:46AM 20 I'D LIKE TO SWITCH TOPICS AND TALK ABOUT THE ASSAY  
09:46AM 21 DEVELOPMENT PROCESS AT THERANOS. OKAY?

09:46AM 22 A. SURE.

09:46AM 23 Q. SO YOU UNDERSTAND THAT PRIOR TO THE TIME THAT THERANOS  
09:46AM 24 STARTED TESTING PATIENT BLOOD BY COLLECTING SAMPLES AT  
09:46AM 25 WALGREENS, THERE HAD BEEN RESEARCH AND DEVELOPMENT WORK ON

09:46AM 1 THESE SMALL BLOOD SAMPLE ASSAYS?

09:46AM 2 A. I BELIEVE SO, YES.

09:46AM 3 Q. AND THERE WAS AN R&D DEPARTMENT AT THERANOS WHO WAS

09:46AM 4 RESPONSIBLE FOR CONDUCTING THAT RESEARCH; IS THAT RIGHT?

09:46AM 5 A. YES.

09:46AM 6 Q. AND THE -- THAT HAD GONE ON FOR SOME TIME PRIOR TO EVEN

09:47AM 7 YOUR ARRIVAL AT THERANOS AS I UNDERSTAND IT; RIGHT?

09:47AM 8 A. YES.

09:47AM 9 Q. AND THE RESEARCH AND DEVELOPMENT PROCESS WAS TO ACTUALLY

09:47AM 10 DEVELOP THE NOVEL TECHNOLOGY THAT THERANOS WAS TRYING TO OFFER;

09:47AM 11 IS THAT RIGHT?

09:47AM 12 A. YES, THERANOS CONSIDERED THE TECHNOLOGY NOVEL, YES.

09:47AM 13 Q. RIGHT. AND THE NOVELTY, AT LEAST ACCORDING TO THE

09:47AM 14 COMPANY, WAS TO DEVELOP A LOT OF ASSAYS THAT COULD USE VERY

09:47AM 15 SMALL BLOOD SAMPLES SUCH AS A CAPILLARY TUBE SAMPLE FROM A

09:47AM 16 FINGER?

09:47AM 17 A. YES.

09:47AM 18 Q. OKAY. AND THAT AT THE TIME THAT THE -- YOU WORKED ON A

09:47AM 19 VALIDATION OF ASSAYS FOR THE CLINICAL LAB, A LOT OF THAT WORK

09:47AM 20 ON DEVELOPING ASSAYS HAD ALREADY OCCURRED IN THE RESEARCH AND

09:47AM 21 DEVELOPMENT SECTION; RIGHT?

09:47AM 22 A. MY UNDERSTANDING WAS THAT IT WAS MORE IN LINE WITH

09:48AM 23 PRE-VALIDATION.

09:48AM 24 I WAS INVOLVED IN THE -- THE PRE-VALIDATION IS R&D

09:48AM 25 EXPERIMENTS AND WORK THAT OCCUR TO PROOF OF PRINCIPLE AND MAKE

09:48AM 1 SURE -- IT'S NOT VALIDATION WORK PER SE.

09:48AM 2 VALIDATION INVOLVES A PLAN THAT IS APPROVED BY A LAB

09:48AM 3 DIRECTOR, AND THEN YOU EXECUTE THE VALIDATION, ET CETERA.

09:48AM 4 Q. RIGHT.

09:48AM 5 SO THE RESEARCH AND DEVELOPMENT WORK THAT IS DONE IS NOT

09:48AM 6 THE SAME AS THE CLIA VALIDATION WORK THAT HAS TO BE DONE BEFORE

09:48AM 7 A LAB HAS TO TEST PATIENTS; CORRECT?

09:48AM 8 A. THE VALIDATION HAS TO FOLLOW THE PLAN, AND IT'S USUALLY

09:48AM 9 CONDUCTED BY R&D.

09:48AM 10 Q. RIGHT.

09:48AM 11 AND JUST SO MY QUESTION IS CLEAR, I'LL TRY TO ASK IT IN A

09:48AM 12 BETTER WAY. THERE'S -- ONE THING IS ASSAY DEVELOPMENT WORK

09:48AM 13 THAT THE R&D DEPARTMENT DOES BEFORE ANYONE TRIES TO VALIDATE IT

09:49AM 14 FOR THE CLIA LAB?

09:49AM 15 A. CORRECT, CORRECT.

09:49AM 16 Q. OKAY. BUT AT SOME POINT A LABORATORY COULD TAKE THAT WORK

09:49AM 17 AND THEN GO THROUGH THE STEPS NECESSARY TO VALIDATE IT FOR THE

09:49AM 18 CLIA LAB; CORRECT?

09:49AM 19 A. CORRECT.

09:49AM 20 Q. OKAY. AND BEFORE THAT HAPPENS, THE ASSAY CAN'T BE USED TO

09:49AM 21 TEST PATIENTS; CORRECT?

09:49AM 22 A. CORRECT.

09:49AM 23 Q. OKAY. BUT WHEN YOU STARTED WORKING ON THESE ASSAY

09:49AM 24 VALIDATIONS, OBVIOUSLY WITH THE RESEARCH AND DEVELOPMENT PEOPLE

09:49AM 25 AS WELL, THE COMPANY WASN'T STARTING FROM SCRATCH IN TERMS OF

09:49AM 1 DEVELOPING SMALL BLOOD SAMPLE ASSAYS?

09:49AM 2 A. I'M NOT VERY FAMILIAR WITH THE WORK THAT OCCURRED IN R&D

09:49AM 3 PRIOR TO STARTING IN THE LABORATORY.

09:49AM 4 Q. OKAY. I MIGHT HAVE SOME THINGS THAT MIGHT HELP REFRESH

09:49AM 5 YOUR RECOLLECTION.

09:49AM 6 BUT FOR NOW CAN WE LOOK AT EXHIBIT 9921, AND THAT IS IN, I

09:49AM 7 BELIEVE, THE SECOND VOLUME OF YOUR BINDERS.

09:50AM 8 THE WITNESS: YOUR HONOR, MAY I ASK A PROCEDURAL

09:50AM 9 QUESTION?

09:50AM 10 THE COURT: YES.

09:50AM 11 THE WITNESS: I'M WONDERING IN THE INTEREST OF TIME,

09:50AM 12 WHETHER THE EXHIBIT CAN JUST BE SHOWN ON THE SCREEN RATHER THAN

09:50AM 13 HUNTING FOR IT IN THE BINDERS, BUT I DON'T KNOW WHAT THE

09:50AM 14 COURT'S PROCEDURE IS.

09:50AM 15 MR. COOPERSMITH: I THINK DR. ROSENDORFF MAKES AN

09:50AM 16 EXCELLENT SUGGESTION, IT MIGHT SAVE US SOME TIME.

09:50AM 17 THE COURT: WELL, IF YOU HAVE THE ABILITY -- THANK

09:50AM 18 YOU, DR. ROSENDORFF.

09:50AM 19 IF YOU HAVE THE ABILITY AND THE DESIRE TO SHOW THE EXHIBIT

09:50AM 20 ONLY TO THE WITNESS AND THE LAWYERS PRIOR TO ITS ADMISSION, AND

09:50AM 21 THEN MAKE WHATEVER MOTIONS YOU WOULD LIKE AS TO ITS

09:50AM 22 ADMISSIBILITY, THAT WOULD BE FINE AND WE CAN SEE HOW IT GOES.

09:50AM 23 ANY OBJECTION TO THAT, MR. BOSTIC?

09:50AM 24 MR. BOSTIC: NO, YOUR HONOR.

09:51AM 25 MR. COOPERSMITH: I UNDERSTAND THAT MS. ROBINSON HAS

09:51AM 1 THE ABILITY TO DISPLAY IT TO JUST THE COURT AND COUNSEL AND THE  
09:51AM 2 WITNESS AND NOT TO THE JURY UNTIL IT HAS BEEN --  
09:51AM 3 THE COURT: THAT'S MY UNDERSTANDING. AND I HAVE  
09:51AM 4 CONTINUED HIGH CONFIDENCE IN OUR ELECTRICAL AV SYSTEM AS WE GO  
09:51AM 5 FORWARD.  
09:51AM 6 (LAUGHTER.)  
09:51AM 7 THE CLERK: WE MIGHT WANT TO TURN OFF THAT MONITOR  
09:51AM 8 AT THAT DESK WHERE NO ONE IS SITTING IN FRONT OF YOU HAVE AT  
09:51AM 9 DEFENSE TABLE.  
09:52AM 10 (DISCUSSION OFF THE RECORD.)  
09:52AM 11 THE COURT: AS LONG AS THE PRECAUTIONS HAVE BEEN  
09:52AM 12 TAKEN THAT ALL OF THE MONITORS THAT ARE FACING THE PUBLIC ARE  
09:52AM 13 NOT ADMISSIBLE PRIOR TO THE INTRODUCTION OF EVIDENCE. AND  
09:52AM 14 WE'VE HAD THOSE COME UP DURING TRIAL. AND IF THOSE PRECAUTIONS  
09:52AM 15 ARE TAKEN, THEN WE CAN FOLLOW THIS PROTOCOL.  
09:52AM 16 MR. COOPERSMITH: I THINK IT WOULD BE POSSIBLE TO  
09:52AM 17 TURN OFF THE MONITORS.  
09:52AM 18 THE COURT: I THINK THAT'S BEEN DONE. I THINK  
09:52AM 19 THAT'S BEEN ACCOMPLISHED.  
09:52AM 20 MR. COOPERSMITH: GREAT.  
09:52AM 21 THE COURT: SO 9921?  
09:52AM 22 MR. COOPERSMITH: YES, YOUR HONOR. THANK YOU.  
09:52AM 23 Q. AND, DR. ROSENDORFF, IF FOR ANY REASON YOU NEED TO SEE THE  
09:52AM 24 PAPER COPY, THEN OBVIOUSLY JUST LET ME KNOW AND WE CAN DO THAT.  
09:52AM 25 OKAY?

09:52AM 1 A. THANK YOU.

09:52AM 2 Q. OKAY. SO LOOKING AT EXHIBIT 9921, WHICH YOU SEE ON YOUR

09:52AM 3 SCREEN, YOU SEE THAT THIS IS A THERANOS DOCUMENT, AND IT'S A

09:52AM 4 MASTER VALIDATION PLAN FOR ELISA ASSAYS ON THERANOS DEVICES.

09:52AM 5 DO YOU SEE THAT?

09:52AM 6 A. YES.

09:52AM 7 Q. AND DO YOU SEE THAT THIS WAS SIGNED BY SEVERAL

09:52AM 8 INDIVIDUALS?

09:52AM 9 A. YES.

09:52AM 10 Q. AND ONE OF THEM IS SUREKHA GANGAKHEDKAR.

09:53AM 11 DO YOU SEE THAT?

09:53AM 12 A. I THINK YOU MANGLED HER LAST NAME.

09:53AM 13 Q. I'M SURE I DID. DO YOU HAVE A BETTER PRONUNCIATION?

09:53AM 14 A. I DO NOT, NO.

09:53AM 15 Q. OKAY. WELL, WE'LL CALL HER SUREKHA FOR THE MOMENT.

09:53AM 16 A. OKAY. OKAY.

09:53AM 17 Q. AND YOU'RE FAMILIAR WITH THAT PERSON; RIGHT?

09:53AM 18 A. YES, I AM.

09:53AM 19 Q. AND SHE WAS SOMEONE WHO WORKED IN THE RESEARCH AND

09:53AM 20 DEVELOPMENT LAB AT THERANOS?

09:53AM 21 A. YES.

09:53AM 22 Q. AND SHE WORKED ON ELISA ASSAYS IN PARTICULAR?

09:53AM 23 A. YES.

09:53AM 24 Q. AND IS ANOTHER WORD FOR ELISA ASSAYS, IMMUNOASSAYS?

09:53AM 25 A. YES.

09:53AM 1 Q. AND THAT'S THE TYPE ASSAY THAT THE EDISON 3 SERIES COULD  
09:53AM 2 RUN?

09:53AM 3 A. YES.

09:53AM 4 Q. AND YOU RECOGNIZE HER ON THE DOCUMENT?

09:53AM 5 A. YES, I SEE HER NAME.

09:53AM 6 Q. AND THIS IS A PROCEDURE THAT WAS ACTUALLY PRE-DATING YOUR  
09:53AM 7 TIME AT THERANOS ON A MASTER VALIDATION PLAN; IS THAT CORRECT?

09:53AM 8 A. IT APPEARS TO BE.

09:53AM 9 MR. COOPERSMITH: YES. YOUR HONOR, WE OFFER  
09:54AM 10 EXHIBIT 9921.

09:54AM 11 MR. BOSTIC: YOUR HONOR, AUTHENTICATION.

09:54AM 12 MR. COOPERSMITH: YOUR HONOR, I THINK AUTHENTICATION  
09:54AM 13 WOULD BE ACCOMPLISHED BY ATTRIBUTES OF THE DOCUMENT. HE  
09:54AM 14 RECOGNIZED SUREKHA'S NAME, AND SHE SIGNED THE DOCUMENT.

09:54AM 15 IT ACTUALLY HAS A CMS BATES NUMBER INDICATING IT CAME FROM  
09:54AM 16 CMS.

09:54AM 17 I DON'T THINK THERE'S AN AUTHENTICATION DOCUMENT -- AN  
09:54AM 18 AUTHENTICATION ISSUE BASED ON THE FEATURES OF THE DOCUMENT,  
09:54AM 19 WHICH IS ONE OF THE WAYS THAT THE DOCUMENT CAN BE  
09:54AM 20 AUTHENTICATED.

09:54AM 21 THE COURT: CAN YOU JUST ASK A COUPLE OF MORE  
09:54AM 22 FOUNDATIONAL QUESTIONS, PLEASE.

09:54AM 23 MR. COOPERSMITH: YES, YOUR HONOR.

09:54AM 24 Q. DR. ROSENDORFF, YOU ALSO SEE ARNOLD GELB, M.D., ON THE  
09:54AM 25 DOCUMENT?

09:54AM 1 A. YES, I DO.

09:54AM 2 Q. AND THAT WAS THE PERSON WHO WAS THE LAB DIRECTOR PRIOR TO

09:54AM 3 YOUR ARRIVAL?

09:54AM 4 A. NO. THE LABORATORY DIRECTOR OF RECORD WAS SPENCER HIRAKI.

09:55AM 5 Q. RIGHT. BUT YOU KNOW WHO DR. GELB WAS; RIGHT?

09:55AM 6 A. I BELIEVE HE WAS THE CLIA LABORATORY DIRECTOR BEFORE

09:55AM 7 DR. HIRAKI WENT ON TO THE LICENSE.

09:55AM 8 Q. OKAY. BUT YOU RECOGNIZE HIS NAME ON THE DOCUMENT?

09:55AM 9 A. YES, I RECOGNIZE HIS NAME.

09:55AM 10 Q. AND DR. GELB, AT THE TIME HE WAS LABORATORY DIRECTOR

09:55AM 11 BEFORE DR. HIRAKI, WOULD HAVE BEEN IN A POSITION TO SIGN AND

09:55AM 12 APPROVE SOP'S JUST LIKE ANY OTHER LAB DIRECTOR, AS FAR AS YOU

09:55AM 13 KNOW; RIGHT?

09:55AM 14 A. I'M NOT SURE WHAT YOU'RE ASKING, I'M SORRY.

09:55AM 15 Q. OKAY. I'LL ASK A DIFFERENT QUESTION.

09:55AM 16 SO YOU SEE THE DOCUMENT IS A STANDARD OPERATING PROCEDURE

09:55AM 17 THAT IT SAYS AT THE TOP?

09:55AM 18 A. YES.

09:55AM 19 Q. AND IT HAS A THERANOS LOGO AS IT EXISTED AT THE TIME ON

09:55AM 20 IT.

09:55AM 21 DO YOU SEE THAT?

09:55AM 22 A. YES. I WASN'T THERE SO I DON'T KNOW WHAT THE LOGO WAS.

09:55AM 23 Q. OKAY. BUT DO YOU SEE THE NAME THERANOS AND IT'S A LOGO;

09:55AM 24 RIGHT?

09:55AM 25 A. YES.

09:55AM 1 Q. OKAY. AND THIS FORM, WHERE YOU HAVE A BOX AT THE TOP THAT  
09:55AM 2 INDICATES WHAT THE DOCUMENT IS, AND THEN IT HAS SPACES FOR THE  
09:56AM 3 AUTHOR, AND THE REVIEWER, AND THE APPROVER, THAT'S A FORM THAT  
09:56AM 4 YOU HAVE SEEN BEFORE ON LOTS OF OTHER STANDARD OPERATING  
09:56AM 5 PROCEDURES AT THERANOS; CORRECT?

09:56AM 6 A. I'M A LITTLE CONFUSED WITH THIS DOCUMENT BECAUSE AT THE

09:56AM 7 TOP IT SAYS STANDARD OPERATING PROCEDURE AND THEN TWO LINES

09:56AM 8 DOWN IT SAYS MASTER VALIDATION PLAN.

09:56AM 9 SO A VALIDATION PLAN IS NOT AN OPERATING PROCEDURE.

09:56AM 10 AN OPERATING PROCEDURE IS SOMETHING THAT THE LAB DOES ONCE

09:56AM 11 YOU GO INTO PRODUCTION.

09:56AM 12 Q. YES, DR. ROSENDORFF.

09:56AM 13 BUT MY QUESTION IS DIFFERENT. I'M SIMPLY ASKING WHETHER

09:56AM 14 THE FORM OF THE DOCUMENT, WHERE IT SAYS STANDARD OPERATING

09:56AM 15 PROCEDURE AT THE TOP, AND IT HAS A SPACE FOR AUTHORS, AND

09:56AM 16 REVIEWERS, AND APPROVERS JUST LIKE THIS DOCUMENT DOES, THAT'S A

09:56AM 17 FORM THAT YOU'VE SEEN AT THERANOS MANY TIMES IN ALL SORTS OF

09:56AM 18 DIFFERENT SOP'S AND VALIDATION REPORTS; CORRECT?

09:56AM 19 A. YES.

09:56AM 20 Q. AND THIS DOCUMENT LOOKS JUST LIKE THAT DOCUMENT IN TERMS

09:57AM 21 OF THE FORM OF THE DOCUMENT; CORRECT?

09:57AM 22 A. YES, I BELIEVE SO.

09:57AM 23 Q. OKAY. AND IF YOU JUST, WITHOUT READING IT OUT LOUD TO THE

09:57AM 24 JURY, YOU SEE THAT IN THE BODY OF THE DOCUMENT, EVEN IF YOU

09:57AM 25 TURN TO THE SECOND PAGE IN THE TABLE OF CONTENTS, IT HAS, LIKE,

09:57AM 1 VARIOUS SECTIONS REGARDING DIFFERENT ASPECTS OF VALIDATION THAT  
09:57AM 2 HAVE TO OCCUR.  
09:57AM 3 DO YOU SEE THAT?  
09:57AM 4 A. YES.  
09:57AM 5 Q. AND, FOR EXAMPLE, ACCURACY AND PRECISION AND SENSITIVITY  
09:57AM 6 AND SO FORTH.  
09:57AM 7 DO YOU SEE THAT?  
09:57AM 8 A. YES.  
09:57AM 9 MR. COOPERSMITH: YOUR HONOR, WE OFFER EXHIBIT 9921.  
09:57AM 10 THE COURT: I'LL ADMIT IT, AND IT MAY BE PUBLISHED.  
09:57AM 11 (DEFENDANT'S EXHIBIT 9921 WAS RECEIVED IN EVIDENCE.)  
09:57AM 12 BY MR. COOPERSMITH:  
09:57AM 13 Q. DR. ROSENDORFF, DO YOU SEE THE FIRST PAGE? AND THIS IS,  
09:57AM 14 AGAIN, SOMETHING THAT EXISTED BEFORE YOUR TIME AT THERANOS;  
09:57AM 15 CORRECT?  
09:57AM 16 A. YES.  
09:57AM 17 Q. AND IT'S AS YOU SAID, THE MASTER VALIDATION PLAN FOR ELISA  
09:58AM 18 ASSAYS ON THERANOS DEVICES?  
09:58AM 19 A. YES.  
09:58AM 20 Q. AND IF YOU TURN TO THE SECOND PAGE THAT HAS THE TABLE OF  
09:58AM 21 CONTENT, YOU SEE THERE'S A LIST OF DIFFERENT SECTIONS?  
09:58AM 22 A. YES.  
09:58AM 23 Q. AND, FOR EXAMPLE, JUST TO DISCUSS A FEW, SECTION 12 IS  
09:58AM 24 QUALITY CONTROL?  
09:58AM 25 A. YES.

09:58AM 1 Q. AND SECTION 13 IS PRECISION?

09:58AM 2 A. YES.

09:58AM 3 Q. AND SECTION 14 IS ANALYTICAL SENSITIVITY?

09:58AM 4 A. YES.

09:58AM 5 Q. OKAY. AND 16 IS ACCURACY/TRUENESS/AND COMPARABILITY?

09:58AM 6 A. YES.

09:58AM 7 Q. AND TO PICK OUT ONE MORE. SECTION 20 IS STABILITY?

09:58AM 8 A. YES.

09:58AM 9 Q. SO THESE THINGS ARE, AS YOU UNDERSTAND IT AS LAB DIRECTOR,

09:58AM 10 ARE THINGS THAT ARE REQUIRED TO DO WHEN YOU VALIDATE AN ASSAY

09:58AM 11 IN A CLIA LAB; CORRECT?

09:58AM 12 A. THIS IS A LARGER SET OF ITEMS THAN WOULD BE REQUIRED UNDER

09:59AM 13 CLIA.

09:59AM 14 Q. OKAY. SO THERE'S MORE SECTIONS HERE THAN WHAT IS ACTUALLY

09:59AM 15 REQUIRED UNDER CLIA; IS THAT RIGHT?

09:59AM 16 A. YES.

09:59AM 17 Q. OKAY. AND THAT'S WHAT'S THE TABLE OF CONTENTS.

09:59AM 18 IF YOU GO TO THE PAGE 5 OF THE DOCUMENT. AND I'M

09:59AM 19 REFERRING TO THE PAGE NUMBERS IN THE LITTLE BOX AT THE BOTTOM.

09:59AM 20 YOU CAN SEE THEM ON YOUR SCREEN. THIS IS PAGE 5 OF 17.

09:59AM 21 DO YOU SEE THAT?

09:59AM 22 A. YES, SIR.

09:59AM 23 Q. AND IF YOU GO TO SECTION 4, "RESPONSIBILITIES."

09:59AM 24 DO YOU SEE SECTION 4.1, "IT IS THE RESPONSIBILITY OF THE

09:59AM 25 LABORATORY DIRECTOR TO ENSURE THAT THE ELISA ASSAYS INDICATED

09:59AM 1 IN ATTACHMENT," AND THERE'S A NUMBER, "ARE QUALIFIED AND  
09:59AM 2 VALIDATED ON THE THERANOS SYSTEMS IN ACCORDANCE WITH THE  
09:59AM 3 QUALIFICATION PLAN SPECIFIED IN THIS DOCUMENT."  
09:59AM 4 DO YOU SEE THAT?  
09:59AM 5 A. YES, I DO.  
09:59AM 6 Q. AND THAT IS, IN FACT, THE DUTY OF THE LAB DIRECTOR TO SO  
09:59AM 7 ENSURE; IS THAT CORRECT?  
09:59AM 8 A. YES.  
09:59AM 9 Q. IF YOU GO TO PAGE 7 OF 17 OF THE DOCUMENT.  
10:00AM 10 DO YOU SEE THERE'S A SECTION 12 ON QUALITY CONTROL?  
10:00AM 11 A. YES.  
10:00AM 12 Q. AND IT SAYS, SECTION 12.1, "TWO TO FOUR LEVEL QUALITY  
10:00AM 13 CONTROL SAMPLES (E.G. LLOQ, QC LOW, QC MEDIAN AND QC HIGH) AS  
10:00AM 14 APPROPRIATE TO THE ASSAY WILL BE ANALYZED AND EACH RUN ON EACH  
10:00AM 15 INSTRUMENT FOR EACH EXPERIMENT."  
10:00AM 16 DO YOU SEE THAT?  
10:00AM 17 A. YES.  
10:00AM 18 Q. AND IF YOU GO TO SECTION -- I'M SORRY, PAGE 14 OF 17.  
10:00AM 19 DO YOU SEE THERE'S SECTION 22 THERE?  
10:00AM 20 A. YES.  
10:00AM 21 Q. AND THAT'S TITLED ALTERNATIVE ASSESSMENT PROCEDURE?  
10:00AM 22 A. YES.  
10:00AM 23 Q. AND THEN 22.1 SAYS, "BECAUSE OF THE UNIQUE FEATURES OF THE  
10:00AM 24 THERANOS SYSTEMS, TRADITIONAL PROFICIENCY TESTING PROGRAMS ARE  
10:00AM 25 NOT EXPECTED TO BE APPLICABLE."

10:00AM 1 DO YOU SEE THAT?

10:00AM 2 A. YES.

10:00AM 3 Q. AND THEN SECTION 22.2 READS, "INSTEAD, AN ALTERNATIVE

10:01AM 4 ASSESSMENT PROGRAM (AAP) WILL BE DEVELOPED AS DESCRIBED IN CLSI

10:01AM 5 GUIDELINES GP 29-A 2."

10:01AM 6 DO YOU SEE THAT?

10:01AM 7 A. YES.

10:01AM 8 Q. AND CLSI, CAN YOU TELL US WHAT THAT IS?

10:01AM 9 A. CLINICAL LABORATORY STANDARDS INSTITUTE.

10:01AM 10 Q. AND THAT'S A GROUP, I THINK THEY'RE BASED IN PENNSYLVANIA?

10:01AM 11 A. CORRECT.

10:01AM 12 Q. WHO ISSUE GUIDELINES FOR CLINICAL LABS?

10:01AM 13 A. CORRECT.

10:01AM 14 Q. AND THEIR VIEWS ARE OFTEN CONSIDERED BY LABORATORIES?

10:01AM 15 A. YES.

10:01AM 16 Q. AND USED TO IMPLEMENT PROCEDURES BECAUSE THEY'RE

10:01AM 17 CONSIDERED TO BE AUTHORITATIVE?

10:01AM 18 A. YES.

10:01AM 19 Q. OKAY. AND AT TIMES YOU WOULD REFER TO CLSI MATERIALS TO

10:01AM 20 DO YOUR JOB AS LAB DIRECTOR?

10:01AM 21 A. YES.

10:01AM 22 Q. OKAY. AND, IN FACT, THERE ARE CLSI MATERIALS THAT

10:01AM 23 SPECIFICALLY RELATE TO ALTERNATIVE ASSESSMENT PROCEDURES; IS

10:01AM 24 THAT RIGHT?

10:01AM 25 A. I -- THAT'S MY UNDERSTANDING FROM READING THIS GP 29, I

10:02AM 1 GUESS, THAT'S THE ONE THAT HANDLES IT.

10:02AM 2 Q. OKAY. WE'LL LOOK AT A THING OR TWO IN A FEW MINUTES THAT

10:02AM 3 DEAL WITH THAT.

10:02AM 4 A. OKAY.

10:02AM 5 Q. AND THEN LET'S JUST GO -- I THINK THAT'S ALL ON THAT

10:02AM 6 DOCUMENT. YOU CAN PUT THAT ASIDE.

10:02AM 7 OKAY. WE WERE TALKING A FEW MINUTES AGO ABOUT THE WORK

10:02AM 8 THAT GOES INTO DEVELOPING AN ASSAY ON THE RESEARCH SIDE BEFORE

10:02AM 9 IT GETS TO THE POINT OF TRYING TO BE -- TRYING TO VALIDATE IT

10:02AM 10 FOR THE CLIA LAB.

10:02AM 11 DO YOU REMEMBER THAT?

10:02AM 12 A. YES.

10:02AM 13 Q. OKAY. AND I'D LIKE TO SHOW YOU AN EXHIBIT, WHICH IS 1031,

10:02AM 14 AND WE CAN JUST SHOW IT ON THE SCREENS.

10:03AM 15 OKAY. DO YOU SEE EXHIBIT 1031, DR. ROSENDORFF?

10:03AM 16 A. YES.

10:03AM 17 Q. AND THIS IS AN EMAIL FROM THE SAME PERSON WHOSE NAME I

10:03AM 18 WON'T EVEN ATTEMPT THIS TIME, SUREKHA?

10:03AM 19 A. GANGAKHEDKAR. I THINK THAT'S HOW YOU PRONOUNCE IT.

10:03AM 20 Q. OKAY. THANK YOU, DR. ROSENDORFF. I APPRECIATE IT.

10:03AM 21 A. UH-HUH.

10:03AM 22 Q. IT'S AN EMAIL FROM HER TO A GROUP OF PEOPLE, INCLUDING

10:03AM 23 DR. DANIEL YOUNG, YOURSELF, ELIZABETH HOLMES, AND IT HAS A COPY

10:03AM 24 TO SHARADA SIVARAMAN.

10:03AM 25 DO YOU SEE THAT?

10:03AM 1 A. YES.

10:03AM 2 Q. AND DR. SIVARAMAN WAS ALSO A SCIENTIST WHO WORKED IN THE

10:03AM 3 RESEARCH AND DEVELOPMENT SECTION AT THERANOS?

10:03AM 4 A. YES.

10:03AM 5 Q. OKAY. AND SAME WITH DR. YOUNG; RIGHT?

10:03AM 6 A. HE WAS THE VP OF THERANOS SYSTEMS AND THAT WAS HIS TITLE,

10:03AM 7 AND HE HAD A HAND IN EVERYTHING REALLY.

10:03AM 8 Q. I'M SORRY, I DIDN'T HEAR YOU.

10:03AM 9 A. HE HAD A HAND IN EVERYTHING.

10:03AM 10 Q. RIGHT. DR. YOUNG HAD A HAND IN EVERYTHING?

10:03AM 11 A. YEAH.

10:03AM 12 Q. AND TO FIX PROBLEMS IF THEY AROSE AND DEAL WITH ASSAYS IN

10:04AM 13 GENERAL?

10:04AM 14 A. YES.

10:04AM 15 Q. AND MR. BALWANI RELIED ON DR. YOUNG FOR THOSE PURPOSES; IS

10:04AM 16 THAT RIGHT?

10:04AM 17 MR. BOSTIC: OBJECTION. IT CALLS FOR SPECULATION

10:04AM 18 AND LACKS FOUNDATION.

10:04AM 19 THE COURT: DO YOU WANT TO LAY A FOUNDATION?

10:04AM 20 MR. COOPERSMITH: SURE, YOUR HONOR.

10:04AM 21 Q. YOU HAD AN OPPORTUNITY WHILE YOU WERE AT THERANOS TO

10:04AM 22 OBSERVE DR. YOUNG PERFORMING HIS JOB; IS THAT RIGHT?

10:04AM 23 A. YES.

10:04AM 24 Q. AND YOU HAD AN OPPORTUNITY TO OBSERVE MR. BALWANI

10:04AM 25 INTERACTING WITH DR. YOUNG?

10:04AM 1 A. YES.

10:04AM 2 Q. AND YOU UNDERSTOOD FROM THAT OBSERVATION THAT MR. BALWANI

10:04AM 3 WAS RELYING ON DR. YOUNG FOR A LOT OF ISSUES THAT CAME UP WITH

10:04AM 4 ASSAYS AT THERANOS?

10:04AM 5 MR. BOSTIC: SPECULATION. ALSO VAGUE.

10:04AM 6 THE COURT: MAYBE YOU SHOULD DEVELOP THAT A LITTLE

10:04AM 7 MORE.

10:04AM 8 BY MR. COOPERSMITH:

10:04AM 9 Q. WELL, DO YOU HAVE AN UNDERSTANDING OF THAT,

10:04AM 10 DR. ROSENDORFF?

10:04AM 11 A. THAT MR. BALWANI RELIED ON DR. YOUNG?

10:04AM 12 Q. YES.

10:04AM 13 A. TO --

10:04AM 14 MR. BOSTIC: SAME OBJECTION, YOUR HONOR. CALLS FOR

10:05AM 15 SPECULATION.

10:05AM 16 THE COURT: CAN YOU ASK FOUNDATIONAL QUESTIONS FOR

10:05AM 17 THAT.

10:05AM 18 MR. COOPERSMITH: YES, YOUR HONOR, I'LL CERTAINLY

10:05AM 19 TRY.

10:05AM 20 Q. DR. ROSENDORFF, WERE YOU PRIVY TO CONVERSATIONS BETWEEN

10:05AM 21 MR. BALWANI AND DR. YOUNG ABOUT ASSAYS AND ISSUES THAT AROSE

10:05AM 22 OVER TIME?

10:05AM 23 A. NO, I WAS NOT PRIVY TO IN-PERSON CONVERSATIONS BETWEEN THE

10:05AM 24 TWO OF THEM.

10:05AM 25 Q. WERE YOU PRIVY TO EMAILS THAT WERE CIRCULATED BETWEEN THE

10:05AM 1 TWO OF THEM?

10:05AM 2 A. YES, I WAS.

10:05AM 3 Q. AND FROM THE EMAILS, DO YOU HAVE AN UNDERSTANDING OF THE

10:05AM 4 RELIANCE -- WHETHER MR. BALWANI RELIED ON DR. YOUNG FOR ISSUES

10:05AM 5 THAT AROSE IN CONNECTION WITH ASSAYS?

10:05AM 6 A. I GUESS SO. I MEAN, I'M NOT SURE WHO DANIEL REPORTED TO.

10:05AM 7 I MEAN, MY SENSE WAS THAT SUNNY WAS HOLDING HIM

10:05AM 8 ACCOUNTABLE FOR THE TECHNICAL PERFORMANCE OF THE ASSAYS, YEAH.

10:06AM 9 Q. OKAY.

10:06AM 10 A. YEAH. I DON'T KNOW, I'M JUST TRYING TO ANSWER YOUR

10:06AM 11 QUESTION AS BEST AS I CAN.

10:06AM 12 Q. AND THAT'S ALL I CAN ASK, DR. ROSENDORFF. SO THANK YOU.

10:06AM 13 A. YEAH.

10:06AM 14 Q. ACTUALLY, LOOKING AT EXHIBIT 1031 YOU SEE, AGAIN, THIS IS

10:06AM 15 AN EMAIL AS I DESCRIBED, AND IT'S DATED AUGUST 24TH, 2013.

10:06AM 16 DO YOU SEE THAT?

10:06AM 17 A. YES, YES.

10:06AM 18 Q. AND THIS WAS PRIOR TO THE LAUNCH OF THERANOS BLOOD TESTING

10:06AM 19 SERVICES AT WALGREENS; IS THAT CORRECT?

10:06AM 20 A. YES.

10:06AM 21 Q. AND DO YOU SEE THAT THE DOCUMENT REFERS TO CERTAIN

10:06AM 22 DEVELOPMENT REPORTS?

10:06AM 23 A. YES.

10:06AM 24 MR. COOPERSMITH: YOUR HONOR, WE OFFER EXHIBIT 1031.

10:06AM 25 MR. BOSTIC: NO OBJECTION.

10:06AM 1 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

10:06AM 2 (GOVERNMENT'S EXHIBIT 1031 WAS RECEIVED IN EVIDENCE.)

10:06AM 3 BY MR. COOPERSMITH:

10:06AM 4 Q. OKAY. SO LOOKING AT --

10:07AM 5 THE COURT: WE NEED TO TURN THE JUROR'S MONITORS ON.

10:07AM 6 THE CLERK: I TURNED THEM ON.

10:07AM 7 THE COURT: OH. THERE WE GO. THANK YOU.

10:07AM 8 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

10:07AM 9 Q. SO YOU SEE THAT THIS IS AN EMAIL AND THERE'S ACTUALLY SOME

10:07AM 10 ATTACHMENTS LISTED AT THE TOP?

10:07AM 11 A. YES.

10:07AM 12 Q. AND ONE OF THEM IS TSH MASTER VALIDATION PLAN FOR ELISA

10:07AM 13 ASSAYS.

10:07AM 14 DO YOU SEE THAT?

10:07AM 15 A. YES.

10:07AM 16 Q. AND THEN THERE ARE TWO OTHER ATTACHMENTS.

10:07AM 17 DO YOU SEE THAT?

10:07AM 18 A. YES.

10:07AM 19 Q. AND ONE OF THEM IS THERANOS TSH ASSAY DEVELOPMENT REPORT?

10:07AM 20 A. YES.

10:07AM 21 Q. AND SO AN ASSAY DEVELOPMENT REPORT IS SOMETHING DIFFERENT

10:07AM 22 FROM A CLIA ASSAY REPORT?

10:07AM 23 A. YES.

10:07AM 24 Q. AN ASSAY DEVELOPMENT REPORT IS SOMETHING THAT THE RESEARCH

10:07AM 25 AND DEVELOPMENT SECTION AT THERANOS PUT OUT ON THEIR OWN; IS

10:07AM 1 THAT RIGHT?

10:07AM 2 A. CORRECT.

10:07AM 3 Q. OKAY. AND IT WOULD NOT BE SUFFICIENT TO ACTUALLY RUN THE

10:07AM 4 ASSAY IN THE CLIA LAB; RIGHT?

10:07AM 5 A. IT WOULD BE NECESSARY, BUT NOT SUFFICIENT.

10:07AM 6 Q. OKAY. AND SO IT JUST WORKED THAT THE CLIA LAB COULD LATER

10:07AM 7 BUILD ON TO TRY TO APPROVE AN ASSAY OR VALIDATE AN ASSAY IN THE

10:07AM 8 CLIA LAB?

10:07AM 9 A. YES.

10:07AM 10 Q. OKAY. AND THEN THE EMAIL SAYS, "HI DANIEL & ADAM,

10:08AM 11 "ATTACHED ARE THE DEVELOPMENT REPORTS FOR TSH AND TPSA AND

10:08AM 12 THE VALIDATION PLAN FOR TSH."

10:08AM 13 DO YOU SEE THAT?

10:08AM 14 A. I CAN EXPLAIN A LITTLE BIT WHAT THE DIFFERENCE IS BETWEEN

10:08AM 15 THE DEVELOPMENT REPORTS AND A PLAN IF THAT'S HELPFUL.

10:08AM 16 Q. PLEASE DO.

10:08AM 17 A. WELL, SO BY THE TIME YOU GET TO DOING THE ACTUAL

10:08AM 18 VALIDATION, THE METHOD HAS TO BE LOCKED DOWN AND RECEIVED IN

10:08AM 19 GRANULAR DETAIL EXACTLY WHAT INSTRUMENT YOU'RE USING, WHAT

10:08AM 20 REAGENTS, SOFTWARE, WHO IS PERFORMING IT, ET CETERA.

10:08AM 21 SO YOU CAN'T CHANGE THE ASSAY AFTER THE VALIDATION IS

10:08AM 22 SIGNED WITHOUT A NEW VALIDATION.

10:08AM 23 Q. RIGHT.

10:08AM 24 A. THAT JUST HAPPENED CONSTANTLY AT THERANOS THAT THE ASSAY

10:08AM 25 WAS CHANGING ALL OF THE TIME AND THE QA DEPARTMENT HAD TO TRY

10:08AM 1 TO KEEP AN EYE ON IT TO FIND OUT IF THINGS WERE BEING  
10:08AM 2 REVALIDATED OR NOT. IT WAS IMPOSSIBLE FOR ME TO JUST KEEP  
10:09AM 3 TRACK OF WHAT THE ACTUAL ASSAY WAS.  
10:09AM 4 MR. COOPERSMITH: OKAY. YOUR HONOR, I'M GOING TO  
10:09AM 5 MOVE TO STRIKE THAT ANSWER AS NONRESPONSIVE TO THE QUESTION.  
10:09AM 6 THE COURT: WELL, YOU ASKED HIM TO EXPLAIN.  
10:09AM 7 MR. COOPERSMITH: WELL, I THINK HE EXPLAINED  
10:09AM 8 SOMETHING DIFFERENT.  
10:09AM 9 MR. BOSTIC: YOUR HONOR, THAT WAS RESPONSIVE TO A  
10:09AM 10 QUITE OPEN ENDED QUESTION FROM THE DEFENSE COUNSEL.  
10:09AM 11 (PAUSE IN PROCEEDINGS.)  
10:09AM 12 THE COURT: I WILL STRIKE THE LAST SENTENCE ABOUT  
10:09AM 13 "IMPOSSIBLE FOR ME TO JUST KEEP TRACK OF WHAT THE ASSAY WAS,"  
10:09AM 14 THAT'S STRICKEN.  
10:09AM 15 MR. COOPERSMITH: THANK YOU, YOUR HONOR.  
10:09AM 16 Q. DR. ROSENDORFF, GOING BACK TO THE EMAIL THAT WE HAVE ON  
10:09AM 17 THE SCREEN, THESE WERE ASSAY DEVELOPMENT REPORTS THAT WERE  
10:09AM 18 BEING SENT TO YOU AND DR. YOUNG IN PREPARATION FOR DOING THE  
10:10AM 19 CLIA VALIDATION WORK; CORRECT?  
10:10AM 20 A. I DON'T KNOW EXACTLY WHAT THE INTENT IS OF THIS EMAIL.  
10:10AM 21 Q. OKAY. GOING BACK TO SOMETHING YOU SAID BEFORE. YOU SAID  
10:10AM 22 THAT BY THE TIME YOU DO THE CLIA VALIDATION, THE ASSAY AND WHAT  
10:10AM 23 IS GOING TO GO INTO RUNNING THAT SIEMENS ADVIA HAVE TO BE  
10:10AM 24 LOCKED DOWN.  
10:10AM 25 I THINK THOSE WERE YOUR WORDS?

10:10AM 1 A. YES.

10:10AM 2 Q. ALL RIGHT. BUT ALL OF THAT HAS TO BE DONE IN THE RESEARCH

10:10AM 3 AND DEVELOPMENT SECTION BEFORE THE ASSAY GETS TO THE POINT OF

10:10AM 4 CLIA VALIDATION?

10:10AM 5 A. CORRECT.

10:10AM 6 Q. OKAY. AND THAT WORK, YOU UNDERSTAND, WAS BEING DONE BY

10:10AM 7 SCIENTISTS SUCH AS SUREKHA GANGAKHEDKAR?

10:10AM 8 I'M TAKING A RISK WITH HER NAME AGAIN.

10:10AM 9 BUT THAT'S THE WORK THAT HAS TO BE DONE WITH SCIENTISTS

10:10AM 10 LIKE THAT; RIGHT?

10:10AM 11 A. YES.

10:10AM 12 Q. IF YOU TURN TO THE -- WELL, BEFORE WE GET TO THAT, LET'S

10:11AM 13 JUST GO TO THE SECOND PARAGRAPH BECAUSE I THINK IT MAY ANSWER

10:11AM 14 SOMETHING THAT YOU JUST DISCUSSED.

10:11AM 15 "AS DISCUSSED IN A MEETING WITH ELIZABETH, PLEASE REVIEW

10:11AM 16 THE DATA IN THE DEVELOPMENT REPORTS FOR USABILITY TOWARDS

10:11AM 17 VALIDATION AND PROPOSE WHAT WILL BE NEEDED FOR VERIFICATION FOR

10:11AM 18 THE 3.5 SYSTEM WITH THE PRE-DILUTIONS."

10:11AM 19 DO YOU SEE THAT?

10:11AM 20 A. YES.

10:11AM 21 Q. SO THAT HELPS YOU UNDERSTAND THE PURPOSE OF THE EMAIL;

10:11AM 22 RIGHT? IT'S TO REVIEW THE DATA IN THE DEVELOPMENT REPORTS FOR

10:11AM 23 USABILITY TOWARDS THE CLIA VALIDATION.

10:11AM 24 DO YOU SEE THAT?

10:11AM 25 A. RIGHT. SO WHAT THIS IS SAYING IS, HEY, CAN WE USE THE

10:11AM 1 DATA IN THE PRE-VALIDATION FOR THE VALIDATION.

10:11AM 2 I THINK THAT'S WHAT THIS IS ASKING.

10:11AM 3 Q. OKAY. IF YOU GO TO THE SECOND PAGE OF THE DOCUMENT, YOU

10:11AM 4 SEE THAT THAT IS AN UNSIGNED VERSION OF SOMETHING CALLED A

10:11AM 5 MASTER VALIDATION PLAN FOR ELISA ASSAYS ON THERANOS DEVICES?

10:12AM 6 A. YES.

10:12AM 7 Q. AND THE EFFECTIVE DATE OF THE DOCUMENT IS 8/23/13?

10:12AM 8 A. YES.

10:12AM 9 Q. AND ABOVE THAT YOU SEE IT HAS DOCUMENT NUMBER

10:12AM 10 REVISION: A?

10:12AM 11 A. YES.

10:12AM 12 Q. OKAY. AND THEN THIS IS ACTUALLY THE SAME TITLE OF THE

10:12AM 13 DOCUMENT THAT WE SAW BEFORE IN A SIGNED VERSION BY DR. GELB AND

10:12AM 14 OTHERS; RIGHT?

10:12AM 15 A. YES. SO MY CONFUSION HERE IS WHY THERE'S AN EFFECTIVE

10:12AM 16 DATE WITH NO SIGNATURES.

10:12AM 17 Q. OKAY. BUT YOU RECEIVED THIS ON AUGUST 24TH, 2013; RIGHT?

10:12AM 18 A. OH, THIS IS THE ATTACHMENT? THIS IS THE CONTENTS?

10:12AM 19 Q. YES.

10:12AM 20 A. OKAY.

10:12AM 21 Q. AND YOU CAN SEE IF YOU TURN TO THE -- IT HAS PAGE NUMBERS

10:12AM 22 AT THE VERY BOTTOM IN THE MIDDLE, AND IF YOU TURN TO PAGE 15 OF

10:13AM 23 THE DOCUMENT, OR I GUESS IT WILL BE TURNED FOR YOU.

10:13AM 24 YOU SEE THAT THERE'S -- THAT THAT SECTION ON ALTERNATIVE

10:13AM 25 ASSESSMENT PROCEDURE?

10:13AM 1 A. YES.

10:13AM 2 Q. AND THAT HAS THAT LANGUAGE 22.1, "BECAUSE OF UNIQUE

10:13AM 3 FEATURES OF THE THERANOS SYSTEMS, TRADITIONAL PROFICIENCY

10:13AM 4 TESTING PROGRAMS ARE NOT EXPECTED TO BE APPLICABLE."

10:13AM 5 DO YOU SEE THAT?

10:13AM 6 A. YES, YES.

10:13AM 7 Q. OKAY. YOU CAN PUT THAT ASIDE, DR. ROSENDORFF.

10:13AM 8 I GUESS IT WILL BE PUT ASIDE FOR YOU IF YOU'RE LOOKING AT

10:13AM 9 THE SCREEN.

10:13AM 10 A. GOOD POINT. GOOD POINT.

10:13AM 11 Q. OKAY. IN THE EMAIL THAT WE JUST LOOKED AT, AND IF WE NEED

10:14AM 12 TO LOOK AT IT AGAIN I SUPPOSE WE CAN, THERE'S A TRANSMISSION ON

10:14AM 13 THE EMAIL. IT STATED THERE'S A TRANSMISSION OF AN ASSAY

10:14AM 14 DEVELOPMENT REPORT FOR PSA AND TSH.

10:14AM 15 DO YOU RECALL THAT?

10:14AM 16 A. YES.

10:14AM 17 Q. OKAY. IF YOU COULD TAKE A LOOK AT EXHIBIT 9379.

10:14AM 18 AND YOU SEE THAT'S THE TOTAL PROSTATE SPECIFIC ANTIGEN,

10:14AM 19 TPSA, ASSAY DEVELOPMENT REPORT?

10:14AM 20 A. YES.

10:14AM 21 Q. AND IT'S A DOCUMENT THAT GOES THROUGH FROM PAGE 1 TO

10:15AM 22 PAGE 14?

10:15AM 23 A. OH, YES, THE LAST PAGE IS 14, UH-HUH.

10:15AM 24 Q. AND THIS IS AN ASSAY DEVELOPMENT REPORT THAT WAS

10:15AM 25 TRANSMITTED TO YOU ALONG WITH THE EMAIL THAT WE LOOKED AT IN

10:15AM 1 EXHIBIT 1031?

10:15AM 2 A. YES.

10:15AM 3 MR. COOPERSMITH: YOUR HONOR, WE OFFER EXHIBIT 9379.

10:15AM 4 MR. BOSTIC: NO OBJECTION.

10:15AM 5 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

10:15AM 6 (DEFENDANT'S EXHIBIT 9379 WAS RECEIVED IN EVIDENCE.)

10:15AM 7 BY MR. COOPERSMITH:

10:15AM 8 Q. AND YOU SEE THE TITLE AS I JUST READ IT, DR. ROSENDORFF?

10:15AM 9 A. YES.

10:15AM 10 Q. AND THEN IF YOU GO TO THE LAST PAGE, THERE'S A CONCLUSION.

10:15AM 11 DO YOU SEE THAT?

10:15AM 12 A. YES.

10:15AM 13 Q. AND IT READS, "WE HAVE SUCCESSFULLY DEVELOPED AN

10:15AM 14 IMMUNOASSAY TO DETECT TOTAL PROSTATE-SPECIFIC ANTIGEN (PSA) IN

10:15AM 15 HUMAN SERUM AND PLASMA."

10:16AM 16 DO YOU SEE THAT?

10:16AM 17 A. YES, I SEE THAT.

10:16AM 18 Q. AND THE "WE" THERE YOU UNDERSTAND REFERS TO THE RESEARCH

10:16AM 19 AND DEVELOPMENT PART OF THERANOS?

10:16AM 20 A. YES.

10:16AM 21 Q. AND NOT THE CLIA VALIDATION GROUP?

10:16AM 22 A. CORRECT.

10:16AM 23 Q. AND SO TO DO THE CLIA VALIDATION OF THAT SAME ASSAY, THERE

10:16AM 24 WOULD HAVE TO BE THIS ADDITIONAL WORK THAT IS REQUIRED TO PUT

10:16AM 25 THIS ASSAY ONLINE IN THE CLINICAL LAB; IS THAT RIGHT?

10:16AM 1 A. CORRECT.

10:16AM 2 Q. AND THAT WOULD BE TRUE OF ANY OTHER ASSAY DEVELOPMENT

10:16AM 3 REPORT THAT EXISTED; RIGHT?

10:16AM 4 A. YES.

10:16AM 5 Q. AND THERE WERE A LOT OF ASSAY DEVELOPMENT REPORTS AT

10:16AM 6 THERANOS; RIGHT?

10:16AM 7 A. YES.

10:16AM 8 Q. THERE WERE -- WOULD IT SURPRISE YOU TO LEARN, MAYBE I

10:16AM 9 COULD SAVE MYSELF FROM LIFTING DOCUMENTS, BUT WOULD IT SURPRISE

10:16AM 10 YOU TO LEARN THAT IF WE PUT THEM IN BINDERS, THERE WOULD BE SIX

10:16AM 11 BINDERS OF ASSAY DEVELOPMENT REPORTS THAT THERANOS DEVELOPED?

10:16AM 12 A. NO, IT WOULDN'T SURPRISE ME, NO.

10:16AM 13 Q. OKAY. THAT'S CONSISTENT WITH YOUR MEMORY OF BEING AT

10:17AM 14 THERANOS THAT THERE WAS A LOT OF THAT WORK DONE?

10:17AM 15 A. YES.

10:17AM 16 Q. OKAY. THERE'S ANOTHER EXHIBIT, BUT I THINK YOU CAN SEE IT

10:17AM 17 ON YOUR SCREEN. IT'S EXHIBIT 1305.

10:17AM 18 A. OH, NOTHING IS SHOWING UP ON MY SCREEN.

10:17AM 19 Q. OKAY. LET'S SEE IF WE CAN GET THAT UP THERE.

10:17AM 20 A. OH, THERE IT IS.

10:17AM 21 Q. OKAY. AND DO YOU SEE EXHIBIT 1305 IS AN EMAIL STRING WITH

10:17AM 22 A NUMBER OF PEOPLE ON IT?

10:17AM 23 AND THEN IF YOU LOOK AT THE SECOND EMAIL ON THE FIRST

10:17AM 24 PAGE, YOU SEE THAT THERE'S AN EMAIL FROM A PRANAV PATEL.

10:18AM 25 DO YOU SEE THAT?

10:18AM 1 A. YES.

10:18AM 2 Q. AND IT'S TO A GROUP OF PEOPLE INCLUDING MR. BALWANI,

10:18AM 3 DR. YOUNG, DR. ANEKAL, AND YOURSELF.

10:18AM 4 DO YOU SEE THAT?

10:18AM 5 A. YES.

10:18AM 6 Q. AND IT RELATES TO, IN TERMS OF THE SUBJECT, TNAA UPDATE

10:18AM 7 AND VALIDATION PLANS?

10:18AM 8 A. YES.

10:18AM 9 Q. AND TNAA, DOES THAT REFER TO THERANOS NUCLEIC ACID

10:18AM 10 AMPLIFICATION?

10:18AM 11 A. YES.

10:18AM 12 Q. AND THAT'S A MOLECULAR TEST THAT THERANOS, YOU UNDERSTAND,

10:18AM 13 WAS DEVELOPING AT ONE POINT?

10:18AM 14 A. YES, YOU'VE DONE YOUR HOMEWORK.

10:18AM 15 Q. OKAY. THANK YOU, DR. ROSENDORFF.

10:18AM 16 A. SURE.

10:18AM 17 Q. AND THEN IF YOU GO TO THE EMAIL, IT ACTUALLY TALKS ABOUT

10:18AM 18 SOME ASSAY DEVELOPMENT ISSUES; IS THAT RIGHT?

10:18AM 19 A. YES.

10:18AM 20 Q. AND YOU RECEIVED THIS EMAIL AT THE TIME THAT YOU WORKED AT

10:18AM 21 THERANOS?

10:18AM 22 A. YES.

10:18AM 23 MR. COOPERSMITH: YOUR HONOR, WE OFFER 1305.

10:18AM 24 MR. BOSTIC: NO OBJECTION.

10:18AM 25 THE COURT: IS THIS IN THE BINDERS?

10:18AM 1 MR. COOPERSMITH: YOU KNOW, I THINK WE MIGHT HAVE A  
10:18AM 2 HANDOUT, YOUR HONOR, NOW THAT I THINK OF IT.  
10:19AM 3 MAY I APPROACH?  
10:19AM 4 THE COURT: YES. THANK YOU.  
10:19AM 5 MR. COOPERSMITH: (HANDING.)  
10:19AM 6 THE COURT: OKAY.  
10:19AM 7 MR. COOPERSMITH:  
10:19AM 8 Q. OKAY. LOOKING AT --  
10:19AM 9 THE COURT: I HAVEN'T ADMITTED IT. PARDON ME.  
10:19AM 10 YOU'RE AHEAD OF ME.  
10:19AM 11 IT'S ADMITTED, AND IT MAY BE PUBLISHED.  
10:19AM 12 MR. COOPERSMITH: THANK YOU.  
10:19AM 13 (GOVERNMENT'S EXHIBIT 1305 WAS RECEIVED IN EVIDENCE.)  
10:19AM 14 BY MR. COOPERSMITH:  
10:19AM 15 Q. SO WE'RE LOOKING AT THE SECOND EMAIL ON THE FIRST PAGE.  
10:19AM 16 IF WE CAN ZOOM IN ON THAT EMAIL.  
10:19AM 17 A. YES.  
10:19AM 18 Q. AND DO YOU REMEMBER PRANAV PATEL?  
10:19AM 19 A. I DO REMEMBER HIM.  
10:19AM 20 Q. ANOTHER RESEARCH AND DEVELOPMENT SCIENTIST WHO WORKED AT  
10:19AM 21 THERANOS?  
10:19AM 22 A. YES.  
10:19AM 23 Q. AND WE TALKED ABOUT THESE OTHER PEOPLE, BUT  
10:20AM 24 SAMARTHA ANEKAL, DO YOU RECALL HIM?  
10:20AM 25 A. YES.

10:20AM 1 Q. AND HE'S ANOTHER SCIENTIST WHO WORKED AT THERANOS?

10:20AM 2 A. I HONESTLY DON'T KNOW WHAT HIS PORTFOLIO OR ROLE WAS TO BE

10:20AM 3 HONEST.

10:20AM 4 Q. WAS HE INVOLVED IN MANUFACTURING?

10:20AM 5 A. I JUST DON'T KNOW.

10:20AM 6 Q. OKAY. BUT YOU DO REMEMBER THE NAME?

10:20AM 7 A. YEAH, I REMEMBER IT.

10:20AM 8 Q. OKAY. AND IN THE SECOND EMAIL DR. PATEL WRITES, "HI,

10:20AM 9 "BRIEF UPDATE TOWARDS JANUARY 31ST GOAL (DETAILED IN

10:20AM 10 ATTACHED SPREADSHEET)."

10:20AM 11 AND THEN, "ASSAYS DEVELOPMENT 76 ASSAYS ARE COMPLETE AND

10:20AM 12 16 IN PROGRESS. 5 OF THE (60 IN PROGRESS ARE 90 PERCENT

10:20AM 13 COMPLETE."

10:20AM 14 DO YOU SEE THAT?

10:20AM 15 A. YES.

10:20AM 16 Q. AND THEN IT SAYS, "ASSAY VALIDATION" -- AND JUST TO PAUSE

10:20AM 17 THERE FOR A MINUTE. YOU UNDERSTAND THAT'S RESEARCH AND

10:20AM 18 DEVELOPMENT?

10:20AM 19 A. ASSAYS DEV, YES.

10:20AM 20 Q. YES. THE SECOND BULLET DR. ROSENDORFF SAYS, "ASSAY

10:20AM 21 VALIDATION (WITHOUT CLINICAL SAMPLES: 20 ASSAYS VALIDATED WITH

10:21AM 22 FURTHER 33 IN PROGRESS."

10:21AM 23 A. YES.

10:21AM 24 Q. AND THEN, "LDT VALIDATION" IT SAYS, "13 ASSAYS LDT

10:21AM 25 VALIDATED WITH FURTHER 4 -- 90 PERCENT DONE."

10:21AM 1 DO YOU SEE THAT?

10:21AM 2 A. YES.

10:21AM 3 Q. AND THEN, "WE EXPECT THEM TO BE FINISHED BY END OF NEXT

10:21AM 4 WEEK WITH FINAL REPORTS."

10:21AM 5 DO YOU SEE THAT?

10:21AM 6 A. YES.

10:21AM 7 Q. AND THEN IT SAYS, "FOLLOWING ASSAYS ARE LDT VALIDATED AS

10:21AM 8 OF TODAY."

10:21AM 9 AND THEN IT HAS A LIST OF ASSAYS GOING ON TO THE NEXT

10:21AM 10 PAGE.

10:21AM 11 DO YOU SEE THAT?

10:21AM 12 A. YES.

10:21AM 13 Q. AND THIS WAS ALL WORK THAT WAS BEING DONE AT THERANOS TO

10:21AM 14 TRY TO MOVE TOWARDS VALIDATION OF THESE LABS THAT COULD

10:21AM 15 EVENTUALLY BE USED; RIGHT?

10:21AM 16 A. I'M SORRY, COULD YOU --

10:21AM 17 Q. OF COURSE. YOU UNDERSTAND THIS WAS ALL WORK AT THERANOS

10:21AM 18 TO VALIDATE THESE -- YOU KNOW WHAT, I'M GOING TO WITHDRAW THE

10:21AM 19 QUESTION. I'M NOT EVEN GOING TO ATTEMPT IT.

10:21AM 20 THE COURT: MR. COOPERSMITH, MAYBE THE DECAF.

10:22AM 21 MR. COOPERSMITH: YOU KNOW, THAT'S A GREAT

10:22AM 22 SUGGESTION, YOUR HONOR. I WILL WORK ON THAT.

10:22AM 23 THE WITNESS: THAT'S REALLY FUNNY.

10:22AM 24 (LAUGHTER.)

10:22AM 25 THE COURT: WELL, IT'S ABOUT TIME, RIGHT?

10:22AM 1 GO AHEAD, MR. COOPERSMITH.

10:22AM 2 MR. COOPERSMITH: RIGHT. I HAD ONE MORE CUP OF

10:22AM 3 COFFEE THAN I PROBABLY SHOULD HAVE THIS MORNING.

10:22AM 4 OKAY.

10:22AM 5 Q. SO, DR. ROSENDORFF, LET'S JUST MOVE TO THE ISSUE OF

10:22AM 6 VALIDATION IN THE CLINICAL LAB AS OPPOSED TO THE RESEARCH AND

10:22AM 7 DEVELOPMENT WORK. OKAY?

10:22AM 8 A. SURE. YEAH.

10:22AM 9 Q. AND THAT YOU UNDERSTAND THAT THERE HAD TO BE A DECISION

10:22AM 10 MADE BY SOMEONE AT THERANOS AS TO WHICH ASSAYS WOULD BE

10:22AM 11 VALIDATED FROM ALL OF THE RESEARCH AND DEVELOPMENT WORK THAT

10:22AM 12 WAS DONE, SOMEONE HAD TO JUST MAKE A DECISION WHICH ONES ARE WE

10:22AM 13 GOING TO ACTUALLY MOVE TO VALIDATE IN THE CLIA LAB; RIGHT?

10:22AM 14 A. YEAH, FOR SURE.

10:22AM 15 Q. AND THERE WAS -- THE DECISION WAS AT LEAST IN PART A

10:23AM 16 BUSINESS DECISION?

10:23AM 17 A. CORRECT.

10:23AM 18 Q. AND IN PART IT WAS ALSO A DECISION ABOUT WHICH ASSAYS WERE

10:23AM 19 READY FOR THAT PROCESS; RIGHT?

10:23AM 20 A. CORRECT, CORRECT.

10:23AM 21 Q. AND IN THAT REGARD, YOU UNDERSTAND THAT THE GOAL THAT

10:23AM 22 THERANOS HAD AT THE TIME OF THE WALGREENS LAUNCH FOR BLOOD

10:23AM 23 TESTING WAS TO TRY TO VALIDATE ASSAYS THAT WOULD BE AMONG THE

10:23AM 24 MOST COMMONLY ORDERED TESTS?

10:23AM 25 MR. BOSTIC: FOUNDATION. SPECULATION.

10:23AM 1 THE COURT: YOU'RE ASKING IF THAT'S HIS PERSONAL  
10:23AM 2 KNOWLEDGE?

10:23AM 3 MR. COOPERSMITH: YES, YOUR HONOR. YES.

10:23AM 4 THE COURT: YES. YOU CAN ANSWER THE QUESTION,  
10:23AM 5 WITHIN YOUR PERSONAL KNOWLEDGE.

10:23AM 6 THE WITNESS: I DO RECALL AN EFFORT EARLY IN 2013  
10:23AM 7 TO -- THAT BASICALLY SAID THAT ELIZABETH AND SUNNY'S GOAL WAS  
10:23AM 8 THAT THERANOS WOULD BE ABLE TO RUN 99 PERCENT OF LABORATORY  
10:23AM 9 TESTS OFFERED. SO THAT'S MY RECOLLECTION.

10:24AM 10 I'LL JUST STOP THERE.

10:24AM 11 BY MR. COOPERSMITH:

10:24AM 12 Q. OKAY. AND, DR. ROSENDORFF, YOU UNDERSTAND THAT OF ALL OF  
10:24AM 13 THE ASSAYS THAT A LAB COULD POTENTIALLY RUN, THAT THERE ARE  
10:24AM 14 SOME THAT ARE VERY COMMON?

10:24AM 15 A. YES.

10:24AM 16 Q. THAT DOCTORS ORDER ALL OF THE TIME?

10:24AM 17 A. YES.

10:24AM 18 Q. AND THEN THERE ARE OTHER ASSAYS THAT ARE, YOU KNOW, MORE  
10:24AM 19 OBSCURE; RIGHT?

10:24AM 20 A. YES.

10:24AM 21 Q. AND IT'S MORE RARE THAT A DOCTOR WOULD ORDER THAT  
10:24AM 22 PARTICULAR TEST; RIGHT?

10:24AM 23 A. YES.

10:24AM 24 Q. SO IF A LABORATORY WERE TO DEVELOP AN ASSAY THAT WAS ONE  
10:24AM 25 OF THOSE MORE RARE ONES, IT MIGHT DO A LOT OF WORK IN

10:24AM 1 DEVELOPING AN ASSAY, BUT AS IT TURNS OUT THEY WOULDN'T GET MANY  
10:24AM 2 ORDERS FOR IT; RIGHT?  
10:24AM 3 A. YES.  
10:24AM 4 Q. BUT THERE ARE OTHERS WHERE IT'S -- I THINK YOU SAID THE  
10:24AM 5 OTHER DAY IN YOUR TESTIMONY LIKE BREAD AND BUTTER TYPE ASSAYS;  
10:24AM 6 RIGHT?  
10:24AM 7 A. YES.  
10:24AM 8 Q. OKAY. AND YOU UNDERSTAND OR DO YOU UNDERSTAND THAT AT  
10:24AM 9 THERANOS THERE WAS AT LEAST A GOAL TO TRY TO PUT ONLINE IN THE  
10:24AM 10 CLIA LAB THE FINGERSTICK ASSAYS THAT WERE MOST COMMONLY  
10:24AM 11 ORDERED?  
10:24AM 12 A. YES, THAT WAS THE INITIAL PLAN, YES.  
10:24AM 13 Q. OKAY. AND YOU UNDERSTAND THAT ONE OF THE FACTORS THAT  
10:25AM 14 ACTUALLY WENT INTO WHICH ASSAYS TO ACTUALLY BRING ONLINE;  
10:25AM 15 RIGHT?  
10:25AM 16 A. YES.  
10:25AM 17 Q. OKAY. NOW, ONCE YOU GET TO THE CLIA VALIDATION PROCESS,  
10:25AM 18 NOW THE LAB DIRECTOR HAS TO BE SATISFIED THAT THE CRITERIA ARE  
10:25AM 19 MET TO ACTUALLY USE THE ASSAY FOR PATIENT TESTING; RIGHT?  
10:25AM 20 A. YES.  
10:25AM 21 Q. AND IN ORDER TO MAKE SURE THAT IS PERFORMED AND  
10:25AM 22 DOCUMENTED, THERE'S A VALIDATION REPORT THAT IS PREPARED FOR  
10:25AM 23 THAT PURPOSE?  
10:25AM 24 A. YES.  
10:25AM 25 Q. AND THE VALIDATION REPORTS ARE SOMETHING THAT THE

10:25AM 1 LABORATORY DIRECTOR HAS TO SIGN OFF ON?

10:25AM 2 A. CORRECT.

10:25AM 3 Q. AND YOU, AS LABORATORY DIRECTOR, WOULD HAVE TO SIGN OFF ON

10:25AM 4 THOSE VALIDATION REPORTS; CORRECT?

10:25AM 5 A. YES.

10:25AM 6 Q. AND ULTIMATELY YOU SIGNED QUITE A FEW OF THOSE VALIDATION

10:25AM 7 REPORTS?

10:25AM 8 A. YES.

10:25AM 9 Q. AND I'D LIKE TO SHOW YOU A BINDER -- I THINK I MAY HAVE TO

10:26AM 10 HAND IT UP.

10:26AM 11 MR. COOPERSMITH: YOUR HONOR, MAY I APPROACH?

10:26AM 12 THE COURT: YES.

10:26AM 13 MR. COOPERSMITH: THANK YOU. (HANDING.)

10:27AM 14 Q. OKAY. DR. ROSENDORFF, I'VE HANDED YOU A BINDER, AND THE

10:27AM 15 BINDER HAS SIGNED VALIDATION REPORTS.

10:27AM 16 YOUR HONOR, WE MOVE TO ADMIT ALL OF THESE ASSAY

10:27AM 17 DEVELOPMENT -- I'M SORRY, CLIA VALIDATION REPORTS SIGNED BY

10:27AM 18 DR. ROSENDORFF PURSUANT TO THE STIPULATION OF THE PARTIES.

10:27AM 19 MR. BOSTIC: YOUR HONOR, WE HAVE STIPULATED. I

10:27AM 20 WONDER IF THE EXHIBIT NUMBERS SHOULD BE READ OUT FOR THE

10:27AM 21 RECORD?

10:27AM 22 MR. COOPERSMITH: AND I BELIEVE WE HAVE A WRITTEN

10:27AM 23 STIPULATION THAT WE CAN USE FOR THAT.

10:27AM 24 WITH YOUR PERMISSION, YOUR HONOR, I'LL READ THE NUMBERS,

10:27AM 25 AND THEN I CAN HAND UP THE STIPULATION AS WELL.

10:27AM 1 THE COURT: SURE. THAT'S FINE.

10:27AM 2 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

10:27AM 3 THE COURT: SO, LADIES AND GENTLEMEN, AS I TOLD YOU

10:27AM 4 EARLIER THIS MORNING, THE PARTIES HAVE MET AND CONFERRED AND

10:27AM 5 AGREED, AGREED UPON -- IT SOUNDS LIKE THEY HAVE AGREED UPON

10:27AM 6 CERTAIN DOCUMENTS, AND THEY HAVE STIPULATED TO THE ADMISSION OF

10:27AM 7 THESE DOCUMENTS.

10:28AM 8 MR. COOPERSMITH IS GOING TO READ THE STIPULATION THAT

10:28AM 9 IDENTIFIED EACH OF THE DOCUMENTS FOR US NOW, MR. COOPERSMITH?

10:28AM 10 MR. COOPERSMITH: YES, YOUR HONOR.

10:28AM 11 THE COURT: ALL RIGHT. THANK YOU. SO PLEASE DO PAY

10:28AM 12 ATTENTION AS THIS STIPULATION IS READ.

10:28AM 13 MR. COOPERSMITH.

10:28AM 14 MR. COOPERSMITH: YES, YOUR HONOR.

10:28AM 15 THE PARTIES STIPULATE AND AGREE TO THE ADMISSION OF THE

10:28AM 16 FOLLOWING EXHIBITS INTO EVIDENCE: 9004, 9007, 9013, 9016,

10:28AM 17 9020, 9026, 9031, 9042, 9046, 9048, 9052, 9057, 9082, 9086,

10:28AM 18 9098, 9099, 9102, 9105, 9111, 9113, 9123, 9126, 9129, 9137,

10:29AM 19 9158, 9162, 9166, 9167, 9196, 9201, 9204, 9243, 9245, 9252,

10:29AM 20 9260, 9264, 9268, 9276, 9279, 9284, 9315, 9319, 9323, 9326,

10:29AM 21 9341, 9352, 9368, 9372, 9375, 9378, 9381, 9382, 9384, 9387,

10:30AM 22 9393, 9409, AND 9412.

10:30AM 23 THE COURT: DO YOU AGREE WITH THAT, MR. BOSTIC?

10:30AM 24 MR. BOSTIC: YES, YOUR HONOR, THE GOVERNMENT

10:30AM 25 STIPULATES TO THE ADMISSION OF THOSE DOCUMENTS.

10:30AM 1 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, AS I  
10:30AM 2 MENTIONED EARLIER THIS MORNING AS TO ANOTHER DOCUMENT, THE  
10:30AM 3 PARTIES HAVE AGREED TO THESE FACTS THAT HAVE BEEN READ TO YOU  
10:30AM 4 BY MR. COOPERSMITH.

10:30AM 5 THE COURT WILL ADMIT THOSE EXHIBITS, AND THOSE FACTS ARE  
10:30AM 6 NOW CONCLUSIVELY ESTABLISHED FOR YOU. THANK YOU.

10:30AM 7 (DEFENDANT'S EXHIBITS 9004, 9007, 9013, 9016, 9020, 9026,  
10:28AM 8 9031, 9042, 9046, 9048, 9052, 9057, 9082, 9086, 9098, 9099,  
10:28AM 9 9102, 9105, 9111, 9113, 9123, 9126, 9129, 9137, 9158, 9162,  
10:29AM 10 9166, 9167, 9196, 9201, 9204, 9243, 9245, 9252, 9260, 9264,  
10:29AM 11 9268, 9276, 9279, 9284, 9315, 9319, 9323, 9326, 9341, 9352,  
10:29AM 12 9368, 9372, 9375, 9378, 9381, 9382, 9384, 9387, 9393, 9409, AND  
10:30AM 13 9412 WERE RECEIVED IN EVIDENCE.)

10:31AM 14 MR. COOPERSMITH: YES, YOUR HONOR. WE HAVE A SIGNED  
10:31AM 15 VERSION OF IT, AND WE WILL FILE IT IN THE RECORD ONCE WE HAVE A  
10:31AM 16 CHANCE TO DO SO.

10:31AM 17 THE COURT: THAT'S FINE. THANK YOU.

10:31AM 18 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

10:31AM 19 Q. OKAY. DR. ROSENDORFF, I'VE HANDED YOU A BINDER, AND I'M  
10:31AM 20 NOT GOING TO GO THROUGH EVERY ONE OF THESE, BUT IF YOU WANT TO  
10:31AM 21 JUST FAMILIARIZE YOURSELF WITH IT.

10:31AM 22 THESE ARE THE ASSAY DEVELOPMENT -- I'M SORRY, ASSAY CLIA  
10:31AM 23 VALIDATION REPORTS THAT YOU SIGNED WHILE YOU WERE THE LAB  
10:31AM 24 DIRECTOR AT THERANOS?

10:31AM 25 A. YES.

10:31AM 1 Q. OKAY. AND THESE ARE VALIDATION REPORTS FOR BOTH THE  
10:31AM 2 EDISON DEVICES AND THE MODIFIED PREDICATE DEVICES; CORRECT?  
10:31AM 3 A. YES.  
10:31AM 4 Q. AND JUST TO STEP BACK FOR A MINUTE, WHEN A LABORATORY  
10:31AM 5 PURCHASES AND RUNS FDA PREDICATE APPROVED EQUIPMENT UNMODIFIED,  
10:31AM 6 YOU DON'T HAVE TO DO THE VALIDATION REPORTS; RIGHT?  
10:32AM 7 A. YOU DO WHAT IS CALLED A VERIFICATION. IT'S AN ABRIDGED --  
10:32AM 8 YOU RUN SAMPLES TO MAKE SURE THAT THE METHOD IS PERFORMING  
10:32AM 9 CORRECTLY, BUT IT'S NOT AS INVOLVED AS A VALIDATION.  
10:32AM 10 Q. RIGHT.  
10:32AM 11 A. YEAH.  
10:32AM 12 Q. BUT FOR THOSE UNMODIFIED PREDICATE MACHINES, THERE'S STILL  
10:32AM 13 SOME REQUIREMENT THAT YOU RUN TESTS TO MAKE SURE THAT THE  
10:32AM 14 MACHINE IS OPERATING AS DESIGNED IN THE LABORATORY; RIGHT?  
10:32AM 15 A. YES.  
10:32AM 16 Q. BUT FOR THE LABORATORY DEVELOPED TESTS, THE LDT'S, THERE  
10:32AM 17 HAS TO BE A MORE EXTENSIVE VALIDATION PROCESS?  
10:32AM 18 A. YES, YES.  
10:32AM 19 Q. AND THAT VALIDATION PROCESS IS ACTUALLY REQUIRED BY  
10:32AM 20 REGULATION?  
10:32AM 21 A. YES, IT IS.  
10:32AM 22 Q. AND THAT'S THE WORK THAT IS REPRESENTED BY THE REPORTS  
10:32AM 23 THAT I'VE JUST HANDED YOU IN THAT BINDER?  
10:32AM 24 A. YES, THAT'S CORRECT.  
10:32AM 25 Q. OKAY. LET'S JUST LOOK AT A FEW OF THEM JUST TO ORIENT

10:33AM 1 OURSELVES.

10:33AM 2 SO, FOR EXAMPLE, IF YOU LOOK AT EXHIBIT 9412. AND THEY

10:33AM 3 SHOULD BE IN ORDER.

10:33AM 4 AND YOU CAN SEE IT ON THE SCREEN AS WELL?

10:33AM 5 A. YES.

10:33AM 6 Q. 9412 IS THE ASSAY VALIDATION REPORT ON EDISON 3.X THERANOS

10:33AM 7 SYSTEMS SPECIFICALLY FOR VITAMIN D.

10:33AM 8 DO YOU SEE THAT?

10:33AM 9 A. YES.

10:33AM 10 Q. AND THAT WAS SIGNED BY YOU ON SEPTEMBER 30TH OF 2013; IS

10:33AM 11 THAT CORRECT?

10:33AM 12 A. YES.

10:33AM 13 Q. AND THEN IF YOU GO TO ANOTHER ONE, EXHIBIT 9196, THIS IS

10:34AM 14 THE VALIDATION REPORT YOU SIGNED FOR THE ASSAY HCG?

10:34AM 15 A. YES.

10:34AM 16 Q. AND I THINK YOU DESCRIBED IT ON DIRECT WITH MR. BOSTIC,

10:34AM 17 BUT THAT IS AN ASSAY THAT IS USED TO TEST TO SEE IF A WOMAN IS

10:34AM 18 PREGNANT?

10:34AM 19 A. YES.

10:34AM 20 Q. AND YOU SIGNED THAT ON MARCH 9TH, 2014; IS THAT CORRECT?

10:34AM 21 A. YES.

10:34AM 22 Q. AND THEN IF YOU GO TO EXHIBIT 9409. THAT'S THE

10:34AM 23 VITAMIN B12 ASSAY VALIDATION REPORT; RIGHT?

10:35AM 24 A. YES.

10:35AM 25 Q. AND THEN YOU SIGNED THAT DOCUMENT ON AUGUST 5TH, 2014?

10:35AM 1 A. YES.

10:35AM 2 Q. OKAY. AND THEN LET'S GO TO ONE MORE. 9155.

10:35AM 3 THIS IS THE ASSAY VALIDATION REPORT -- I'M SORRY?

10:35AM 4 MR. BOSTIC: APOLOGIES. THAT ONE IS NOT IN

10:35AM 5 EVIDENCE.

10:35AM 6 MR. COOPERSMITH: OKAY. LET'S NOT GO TO 9155 IN

10:35AM 7 THAT CASE.

10:35AM 8 LET'S GO TO 9158.

10:35AM 9 Q. 9158 IS THE ELISA ASSAY VALIDATION REPORT FOR ESTRADIOL ON

10:35AM 10 THE EDISON 3.5.

10:35AM 11 DO YOU SEE THAT?

10:35AM 12 A. YES.

10:35AM 13 Q. AND YOU SIGNED THAT ON SEPTEMBER 18TH, 2014?

10:35AM 14 A. YES.

10:35AM 15 Q. AND IN ORDER FOR AN ASSAY TO BE RUN IN THE LAB, I THINK WE

10:35AM 16 DISCUSSED THIS, YOUR SIGNATURE IS NECESSARY ON THE DOCUMENT; IS

10:35AM 17 THAT RIGHT?

10:35AM 18 A. YES.

10:35AM 19 Q. NOW, WHEN YOU SIGNED THESE VALIDATION REPORTS, IT WAS ALSO

10:36AM 20 NECESSARY FOR YOU TO REVIEW THE DATA THAT WAS PREPARED FOR THE

10:36AM 21 PURPOSE OF VALIDATION?

10:36AM 22 A. YES.

10:36AM 23 Q. AND THAT DATA WOULD INCLUDE TESTS TO DETERMINE WHETHER THE

10:36AM 24 DEVICE WAS ACCURATE, THE ASSAY WAS ACCURATE?

10:36AM 25 A. YES.

10:36AM 1 Q. AND WHETHER IT WAS PRECISE?

10:36AM 2 A. YES.

10:36AM 3 Q. AND WHETHER THERE WAS APPROPRIATE SENSITIVITY?

10:36AM 4 A. YES.

10:36AM 5 Q. AND IS SENSITIVITY WHERE YOU'RE TRYING TO MAKE SURE THAT

10:36AM 6 THE ASSAY DETECTING THE PARTICULAR ANALYTE THAT YOU'RE

10:36AM 7 INTERESTED IS NOT SOME OTHER ANALYTE?

10:36AM 8 A. YEAH. I MEAN, I DON'T WANT TO GET TOO TECHNICAL, BUT

10:36AM 9 SENSITIVITY IS UNDERSTOOD IN TWO DIFFERENT WAYS.

10:36AM 10 FOR A QUANTITATIVE ASSAY, SENSITIVITY CAN ALSO REFER TO

10:36AM 11 HOW LOW YOU CAN GO.

10:36AM 12 AND THEN THERE'S A LABORATORY CONCEPT OF SENSITIVITY,

10:36AM 13 WHICH IS IF YOU TAKE 100 PEOPLE WITH DISEASE, AND YOU DO THE

10:37AM 14 TEST, HOW MANY OF THOSE TESTS WILL COME UP POSITIVE.

10:37AM 15 Q. OKAY. AND THERE'S ANOTHER ASPECT THAT HAS TO BE TESTED

10:37AM 16 CALLED SPECIFICITY; IS THAT RIGHT?

10:37AM 17 A. CORRECT, CORRECT.

10:37AM 18 Q. AND SPECIFICITY MAY BE THE ONE I WAS THINKING OF. THAT'S

10:37AM 19 WHERE YOU'RE TRYING TO MAKE SURE THAT THE TESTS DETECT THE

10:37AM 20 ANALYTE YOU'RE INTERESTED IN AND NOT SOMETHING ELSE; RIGHT?

10:37AM 21 A. YEAH. AGAIN, SPECIFICITY IS UNDERSTOOD IN SOME CONTEXTS

10:37AM 22 TO MEAN INTERFERING SUBSTANCES, WHICH MEANS YOU'RE PICKING UP

10:37AM 23 WHAT YOU THINK YOU ARE, BUT IT'S FORMALLY DEFINED AS IF YOU

10:37AM 24 HAVE 100 PEOPLE WHO DON'T HAVE A DISEASE, HOW MANY OF THOSE ARE

10:37AM 25 NEGATIVE.

10:37AM 1 Q. OKAY. BUT IN ANY EVENT, THESE DIFFERENT ATTRIBUTES HAVE  
10:37AM 2 TO BE PART OF THE WORK GOING INTO CLIA VALIDATION; RIGHT?  
10:37AM 3 A. YES.  
10:37AM 4 Q. AND YOU HAVE TO BE SATISFIED THAT ALL OF THOSE ARE MET TO  
10:37AM 5 PUT YOUR SIGNATURE ON THE DOCUMENT?  
10:37AM 6 A. YES.  
10:37AM 7 Q. AND THAT IN THE CASE OF THERANOS, YOU SIGNED THE  
10:38AM 8 VALIDATION REPORTS BECAUSE YOU THOUGHT THEY WERE VALID; RIGHT?  
10:38AM 9 A. I SIGNED THEM TRUSTING THAT THE DATA THAT WAS BEING SHOWN  
10:38AM 10 TO ME WAS TRUTHFUL.  
10:38AM 11 Q. AND THE DATA WAS BEING PREPARED BY RESEARCH AND  
10:38AM 12 DEVELOPMENT SCIENTISTS AT THERANOS?  
10:38AM 13 A. CORRECT.  
10:38AM 14 Q. AND YOU HAVE NO EVIDENCE OR REASON TO THINK THAT THE DATA  
10:38AM 15 THAT THEY WERE PRESENTING TO YOU WAS NOT TRUTHFUL?  
10:38AM 16 A. I DIDN'T AT THE TIME. I DO NOW.  
10:38AM 17 Q. OKAY. BUT AT THE TIME --  
10:38AM 18 A. I TRUSTED IT AT THE TIME, YEAH.  
10:38AM 19 Q. OKAY. AND YOU TRUSTED IT AT THE TIME. BUT YOU DIDN'T  
10:38AM 20 BELIEVE THAT THE PEOPLE WHO WERE PROVIDING THE DATA WERE  
10:38AM 21 SOMEHOW DISHONEST OR GIVING YOU DATA THAT WAS FALSE, DID YOU?  
10:38AM 22 A. NO. I OPERATED ON THE BASIS OF TRUST.  
10:38AM 23 Q. BECAUSE THEY WERE LIKE FELLOW SCIENTISTS WHO WORKED IN THE  
10:38AM 24 RESEARCH AND DEVELOPMENT LAB; RIGHT?  
10:38AM 25 A. EXACTLY.

10:38AM 1 Q. SUNNY BALWANI DIDN'T GIVE YOU THE DATA FOR THE ASSAY

10:38AM 2 DEVELOPMENT REPORTS?

10:39AM 3 A. OF COURSE NOT.

10:39AM 4 Q. AND YOU SIGNED THEM BECAUSE, AGAIN, YOU THOUGHT THEY WERE

10:39AM 5 VALID?

10:39AM 6 A. YES.

10:39AM 7 Q. AND YOU SIGNED THEM -- YOU DIDN'T SIGN THEM BECAUSE OF

10:39AM 8 SOME PRESSURE THAT WAS PUT ON YOU, DID YOU?

10:39AM 9 A. THERE WAS AN IMMENSE AMOUNT OF PRESSURE TO GET VALIDATIONS

10:39AM 10 DONE, AND I DIDN'T HAVE AS MUCH TIME AS I WOULD HAVE LIKED TO

10:39AM 11 READ THEM OVER AND APPROVE THEM AND REVIEW THE DATA.

10:39AM 12 Q. SO THE PRESSURE CAME FROM THE FACT THAT THE COMPANY WAS

10:39AM 13 PLANNING TO LAUNCH WITH THE WALGREENS STORES; CORRECT?

10:39AM 14 A. YES.

10:39AM 15 Q. AND THAT YOU UNDERSTOOD MANAGEMENT WAS VERY EAGER TO GET

10:39AM 16 THAT PROGRAM GOING; RIGHT?

10:39AM 17 A. YES.

10:39AM 18 Q. AND ONE OF THE THINGS THAT WERE NECESSARY TO DO THAT WOULD

10:39AM 19 BE ASSAY VALIDATION; RIGHT?

10:39AM 20 A. YES.

10:39AM 21 Q. BUT IN ANY EVENT, YOU SIGNED THEM BECAUSE THEY WERE VALID,

10:39AM 22 NOT BECAUSE OF ANY PRESSURE THAT WAS PUT ON YOU; CORRECT?

10:39AM 23 A. CORRECT.

10:39AM 24 Q. OKAY. LET'S JUST TALK ABOUT THE MODIFIED PREDICATE

10:40AM 25 DEVICES FOR A MINUTE.

10:40AM 1 THOSE WERE ALSO PART OF THE WORK THAT WAS DONE IN THE  
10:40AM 2 RUN-UP TO THE WALGREENS LAUNCH; RIGHT?  
10:40AM 3 A. YES.  
10:40AM 4 Q. AND A MODIFIED PREDICATE DEVICE, AND I THINK YOU DESCRIBED  
10:40AM 5 THIS EARLIER, IS AN FDA APPROVED DEVICE THAT THERANOS  
10:40AM 6 PURCHASED; RIGHT?  
10:40AM 7 A. YES.  
10:40AM 8 Q. AND THEN HAD TO MAKE CERTAIN MODIFICATIONS TO ENABLE IT TO  
10:40AM 9 RUN SMALL BLOOD SAMPLES; RIGHT?  
10:40AM 10 A. YES.  
10:40AM 11 Q. AND THAT WOULD INCLUDE SOME CHANGES TO THE SOFTWARE?  
10:40AM 12 A. YES.  
10:40AM 13 Q. AND THE HARDWARE?  
10:40AM 14 A. YES.  
10:40AM 15 Q. AND THERE WERE ALSO -- THERE WAS A NEED TO WORK OUT THE  
10:40AM 16 DILUTION STEPS; RIGHT?  
10:40AM 17 A. YES.  
10:40AM 18 Q. AND DILUTION IS SIMPLY TAKING THE BLOOD SAMPLES AND ADDING  
10:41AM 19 SOME OTHER LIQUID TO IT TO MAKE THE VOLUME LARGER; RIGHT?  
10:41AM 20 A. YOU TAKE THE BLOOD, YOU SPIN IT DOWN, YOU TAKE OUT THE  
10:41AM 21 CLEAR PORTION, AND THEN YOU ADD EITHER SALINE OR WATER TO IT,  
10:41AM 22 YEAH.  
10:41AM 23 Q. OKAY. AND DILUTION IN THE LAB INDUSTRY IS NOT SOMETHING  
10:41AM 24 THAT IS UNCOMMON; RIGHT?  
10:41AM 25 A. I COULD DESCRIBE THE CONTEXT WHERE IT'S CUSTOMARILY

10:41AM 1 PERFORMED.

10:41AM 2 Q. I THINK I WILL ASK THE QUESTIONS OF YOU, DR. ROSENDORFF.

10:41AM 3 AND THE QUESTION I HAVE, IN FDA APPROVED DEVICES, THERE ARE

10:41AM 4 DILUTION STEPS THAT TAKE PLACE INSIDE OF THE EQUIPMENT?

10:41AM 5 A. I, I -- I'M NOT ON THE EQUIPMENT DEVELOPMENT SIDE, SO I'M

10:41AM 6 NOT SURE I CAN COMMENT ON THAT.

10:41AM 7 Q. LET ME SEE IF I CAN HELP YOU. IF WE CAN TAKE A LOOK AT AN

10:41AM 8 EXHIBIT.

10:42AM 9 AND I THINK YOU CAN SEE IT ON THE SCREEN.

10:42AM 10 BUT LET'S NOT PUBLISH IT YET, MR. ALLEN.

10:42AM 11 AND DO YOU SEE THAT EXHIBIT 204 IS THE OPERATOR GUIDE FOR

10:42AM 12 THE ADVIA 1800 CHEMISTRY SYSTEM?

10:42AM 13 A. YES.

10:42AM 14 Q. AND THAT'S THE MANUFACTURER'S OPERATOR'S GUIDE DOCUMENT;

10:42AM 15 RIGHT?

10:42AM 16 A. YES.

10:42AM 17 Q. AND THERANOS HAD ADVIA 1800 MACHINES THAT IT USED; RIGHT?

10:42AM 18 A. YES.

10:42AM 19 Q. AND SO THIS WOULD BE NECESSARY TO HAVE IN POSSESSION AT

10:42AM 20 THERANOS TO RUN THAT EQUIPMENT; RIGHT?

10:42AM 21 A. YES.

10:42AM 22 Q. AND YOU'RE FAMILIAR WITH THE ADVIA 1800 OPERATOR'S GUIDE;

10:42AM 23 RIGHT?

10:42AM 24 A. NO, NOT REALLY.

10:42AM 25 Q. BUT YOU'VE SEEN IT BEFORE?

10:42AM 1 A. I THINK SO.

10:42AM 2 Q. OKAY. BUT JUST ON THE SUBJECT OF DILUTION, IF YOU COULD

10:42AM 3 TURN TO PAGE 25.

10:43AM 4 AND YOU SEE IT HAS SOME DISCUSSION OF DILUTION THERE?

10:43AM 5 A. OH, IT SAYS -- I'M JUST READING THE SECOND TO THE LAST

10:43AM 6 PARAGRAPH.

10:43AM 7 Q. DR. ROSENDORFF, DON'T READ FROM THE DOCUMENT BECAUSE IT'S

10:43AM 8 NOT IN EVIDENCE YET.

10:43AM 9 A. OH, I'M SORRY. I APOLOGIZE.

10:43AM 10 Q. THANK YOU. AND WHAT I'M JUST POINTING YOU TO IS THAT

10:43AM 11 THERE ARE SECTIONS IN THE DOCUMENT ABOUT SAMPLE DILUTION.

10:43AM 12 DO YOU SEE THAT?

10:43AM 13 A. YES.

10:43AM 14 Q. OKAY. AND THIS WAS A DOCUMENT THAT WAS PUT OUT BY THE

10:43AM 15 SIEMENS COMPANY; RIGHT?

10:43AM 16 A. YES.

10:43AM 17 Q. NOT THERANOS?

10:43AM 18 A. CORRECT.

10:43AM 19 Q. OKAY. YOU CAN PUT THAT ASIDE.

10:43AM 20 AND JUST TO TALK A LITTLE BIT MORE ABOUT MODIFIED

10:43AM 21 PREDICATES, IF YOU COULD TURN TO 9098, AND THAT'S ONE OF THE

10:43AM 22 EXHIBITS IN EVIDENCE FROM THE CLIA ASSAY BINDER THAT WE GAVE

10:44AM 23 YOU A FEW MINUTES AGO.

10:44AM 24 A. UH-HUH.

10:44AM 25 Q. AND THIS DOCUMENT HAS TO DO WITH THE ASSAY CALLED

10:44AM 1 CHLORIDE.

10:44AM 2 DO YOU SEE THAT?

10:44AM 3 A. YES.

10:44AM 4 Q. AND THAT'S ONE OF THE ISE ASSAYS; RIGHT?

10:44AM 5 A. YES.

10:44AM 6 Q. ALONG WITH SODIUM AND POTASSIUM?

10:44AM 7 A. CORRECT.

10:44AM 8 Q. AND THE DOCUMENT READS VALIDATION OF MODIFIED SIEMENS

10:44AM 9 CHLORIDE ASSAY.

10:44AM 10 DO YOU SEE THAT?

10:44AM 11 A. YES.

10:44AM 12 Q. AND SO FOR ONE OF THOSE ASSAYS TO BE PRODUCED AT THERANOS,

10:44AM 13 THAT SAME PROCESS OF ASSAY VALIDATION HAD TO BE USED; RIGHT?

10:44AM 14 A. YES.

10:44AM 15 Q. OKAY. AND THAT'S YOUR SIGNATURE ON THE DOCUMENT IN THIS

10:44AM 16 CASE?

10:44AM 17 A. YES.

10:44AM 18 Q. OKAY. AND I THINK ON YOUR DIRECT EXAMINATION YOU TALKED

10:44AM 19 ABOUT SOME ISSUES WITH THE PARTICULAR ASSAY CALLED POTASSIUM.

10:44AM 20 DO YOU REMEMBER THAT?

10:44AM 21 A. YES.

10:44AM 22 Q. OKAY. AND WE'LL GET TO THAT LATER ON.

10:45AM 23 BUT FOR THE MOMENT, YOU BELIEVED, WHILE YOU WERE WORKING

10:45AM 24 AT THERANOS, THAT THE THERANOS PROTOCOLS RUNNING ON ADVIAS, THE

10:45AM 25 MODIFIED PREDICATES, WORKED REMARKABLY WELL, EXCEPT FOR

10:45AM 1 POTASSIUM; RIGHT?

10:45AM 2 A. AT THE TIME OF VALIDATION I THOUGHT THEY WERE WORKING

10:45AM 3 WELL.

10:45AM 4 AS WE WENT INTO PRODUCTION, AND AS TIME WENT ON I KNEW

10:45AM 5 THEY WEREN'T.

10:45AM 6 Q. BUT YOU BELIEVED, EVEN WHEN YOU LEFT THERANOS, THAT THE

10:45AM 7 MODIFIED PREDICATES WORKED REMARKABLY WELL, WITH THE EXCEPTION

10:45AM 8 OF THE POTASSIUM THAT WE'LL DISCUSS LATER?

10:45AM 9 A. THAT'S NOT MY BELIEF, SIR, NO.

10:45AM 10 Q. OKAY. I'D LIKE YOU TO TURN TO EXHIBIT 28403. I'M SORRY.

10:46AM 11 28324.

10:46AM 12 MR. BOSTIC: COUNSEL, WHAT BINDER IS THAT IN?

10:46AM 13 MR. COOPERSMITH: I'M TRYING TO DETERMINE THAT

10:46AM 14 MYSELF.

10:46AM 15 COULD WE SHOW 28324 ON THE SCREEN, WITHOUT PUBLISHING IT

10:46AM 16 OBVIOUSLY.

10:46AM 17 THE COURT: VOLUME 3, I BELIEVE.

10:46AM 18 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

10:47AM 19 (PAUSE IN PROCEEDINGS.)

10:47AM 20 BY MR. COOPERSMITH:

10:47AM 21 Q. OKAY. WELL, LOOKING AT IT ON THE SCREEN, IF YOU COULD

10:47AM 22 TURN TO PAGE 5, OR IT WILL BE TURNED FOR YOU ON THE SCREEN.

10:47AM 23 AND PRIOR TO YOUR TESTIMONY IN COURT, DR. ROSENDORFF, YOU

10:47AM 24 MET WITH THE GOVERNMENT ON MANY OCCASIONS?

10:47AM 25 A. CORRECT.

10:47AM 1 Q. AND YOU PROVIDED THEM INFORMATION ABOUT WHAT YOU RECALLED  
10:47AM 2 ABOUT YOUR TIME AT THERANOS?  
10:47AM 3 A. CORRECT.  
10:47AM 4 Q. AND THOSE INTERVIEWS WERE ATTENDED BY FEDERAL AGENTS; IS  
10:47AM 5 THAT RIGHT?  
10:47AM 6 A. CORRECT.  
10:47AM 7 Q. AND THEY WERE ATTENDED BY PROSECUTORS?  
10:47AM 8 A. CORRECT.  
10:47AM 9 Q. AND INCLUDING SOME OF THE PROSECUTORS WHO ARE SITTING AT  
10:48AM 10 THE TABLE TODAY?  
10:48AM 11 A. SO I RECALL MR. LEACH WAS PRESENT DURING THE S.E.C.  
10:48AM 12 INTERVIEW.  
10:48AM 13 Q. OKAY. AND IF WE CAN TURN TO THE FIRST PAGE OF THE  
10:48AM 14 DOCUMENT.  
10:48AM 15 SOMETIMES THERE WERE OTHER AGENCIES INVOLVED WITH THE  
10:48AM 16 INTERVIEWS, TOO?  
10:48AM 17 A. CORRECT.  
10:48AM 18 Q. AND THERE WAS A PARTICULAR INTERVIEW ON JUNE 7TH OF 2017?  
10:48AM 19 A. I DON'T INDEPENDENTLY RECALL THAT. I'M JUST READING THE  
10:48AM 20 DATE.  
10:48AM 21 Q. OKAY. DO YOU HAVE ANY DOUBT THAT YOU HAD AN INTERVIEW ON  
10:48AM 22 JUNE 7TH, 2017?  
10:48AM 23 A. NO, I HAVE NO REASON TO DOUBT IT.  
10:48AM 24 Q. OKAY. AND THAT WAS AFTER YOU LEFT THERANOS?  
10:48AM 25 A. CORRECT.

10:48AM 1 Q. AND IT WAS ABOUT FIVE YEARS AGO; RIGHT?

10:48AM 2 A. YES.

10:48AM 3 Q. AND AT THE TIME, YOU WERE PROVIDING INFORMATION ABOUT

10:48AM 4 THERANOS AND WHAT YOU RECALLED; IS THAT RIGHT?

10:48AM 5 A. YES.

10:48AM 6 Q. AND YOU KNEW THAT IT WAS IMPORTANT THAT YOU TOLD THE

10:48AM 7 TRUTH?

10:49AM 8 A. YES.

10:49AM 9 Q. AND YOU DID YOUR BEST TO TELL THE TRUTH?

10:49AM 10 A. YES.

10:49AM 11 Q. AND YOU KNEW THAT IF YOU DIDN'T TELL THE TRUTH, THERE

10:49AM 12 COULD BE CONSEQUENCES; RIGHT?

10:49AM 13 A. YES.

10:49AM 14 Q. BECAUSE YOU WERE TALKING TO FEDERAL AGENTS AND

10:49AM 15 PROSECUTORS?

10:49AM 16 A. YES.

10:49AM 17 Q. OKAY. AND DURING THE INTERVIEW -- IF YOU FLIP TO PAGE 5,

10:49AM 18 MR. ALLEN -- YOU TOLD THE GOVERNMENT THAT YOU BELIEVED THE T

10:49AM 19 PROTOCOL AND FINGERSTICK DRAW WORKED REMARKABLY WELL FOR MOST

10:49AM 20 ANALYTES OTHER THAN POTASSIUM, YOU HAD NO OTHER CONCERNS ABOUT

10:49AM 21 THERANOS ASSAYS.

10:49AM 22 THAT'S WHAT YOU TOLD THE GOVERNMENT?

10:49AM 23 A. I BELIEVE SO, YES.

10:49AM 24 Q. OKAY. DR. ROSENDORFF, LET'S JUST TALK ABOUT THERANOS

10:50AM 25 TECHNOLOGY IN GENERAL FOR A MINUTE?

10:50AM 1 A. SURE.

10:50AM 2 Q. IF YOU COULD TURN TO -- OR IT WILL BE ON THE SCREEN, I

10:50AM 3 KEEP FORGETTING -- EXHIBIT 7462.

10:50AM 4 EXHIBIT 7462 DO YOU SEE IS AN EMAIL STRING BETWEEN YOU AND

10:50AM 5 MR. BALWANI BASED ON THE FEW TOP EMAILS?

10:50AM 6 A. YES.

10:50AM 7 Q. AND THEN THERE WERE OTHER PEOPLE WHO WORKED AT THERANOS

10:50AM 8 WHO WERE COPIED OR SENDERS ON THE OTHER EMAILS; RIGHT?

10:50AM 9 A. YES.

10:50AM 10 Q. AND IT'S DATED IN JULY, JULY 18TH AND 19TH, 2014?

10:50AM 11 A. YES.

10:50AM 12 Q. IS THAT RIGHT?

10:51AM 13 AND THIS IS A DOCUMENT THAT YOU SENT OR RECEIVED AS THE

10:51AM 14 EMAIL -- AS THE CASE MIGHT BE FOR PURPOSES OF CONDUCTING THE

10:51AM 15 BUSINESS AT THERANOS AT THE TIME?

10:51AM 16 A. YES.

10:51AM 17 Q. AND YOU USED EMAILS AT THERANOS FREQUENTLY TO COMMUNICATE

10:51AM 18 ISSUES AND THINGS THAT WERE GOING ON?

10:51AM 19 A. YES.

10:51AM 20 Q. AND YOU WERE REPORTING ON EVENTS THAT OCCURRED THAT YOU

10:51AM 21 LEARNED WHILE YOU WERE ON THE JOB; IS THAT RIGHT?

10:51AM 22 A. YES.

10:51AM 23 Q. AND YOU KNEW THAT IT WAS IMPORTANT TO BE ACCURATE WHEN YOU

10:51AM 24 COMMUNICATED THOSE THINGS SO THAT THE COMPANY WOULD BE ABLE TO

10:51AM 25 TAKE ACTION ACCORDINGLY?

10:51AM 1 A. YES.

10:51AM 2 Q. AND YOU KNEW THAT THERANOS HAD A SYSTEM TO STORE THESE

10:51AM 3 EMAILS SO THAT IF THERE WAS ANY NEED TO REFER BACK TO THEM,

10:51AM 4 THEY COULD DO THAT?

10:51AM 5 A. YES.

10:51AM 6 MR. COOPERSMITH: YOUR HONOR, WE OFFER 7462.

10:51AM 7 MR. BOSTIC: NO OBJECTION.

10:51AM 8 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

10:51AM 9 (DEFENDANT'S EXHIBIT 7462 WAS RECEIVED IN EVIDENCE.)

10:51AM 10 BY MR. COOPERSMITH:

10:51AM 11 Q. OKAY. LET'S GO TO THE EARLIEST EMAIL IN TIME, WHICH IS ON

10:51AM 12 PAGE -- THE SECOND TO THE LAST PAGE.

10:52AM 13 AND DO YOU SEE THERE'S AN EMAIL FROM AMELIA AGUIRRE?

10:52AM 14 A. YES.

10:52AM 15 Q. AND SHE WAS SOMEONE WHO WORKED AT THERANOS?

10:52AM 16 A. YES.

10:52AM 17 Q. WAS SHE A CUSTOMER SERVICE REPRESENTATIVE?

10:52AM 18 A. I THINK SO, YEAH, YEAH.

10:52AM 19 Q. OKAY. AND SHE SENDS IT TO YOU, THIS PARTICULAR EMAIL, AND

10:52AM 20 NICHOLAS MENCHEL.

10:52AM 21 DO YOU SEE THAT?

10:52AM 22 A. YES.

10:52AM 23 Q. AND MR. MENCHEL WAS A PROJECT MANAGER?

10:52AM 24 A. YES.

10:52AM 25 Q. AND IT SAYS "HI ADAM,

10:52AM 1 "DR. PHILIP CHEN WOULD LIKE TO BE CALLED ABOUT LIPID PANEL  
10:52AM 2 RESULTS."  
10:52AM 3 AND IT HAS A CERTAIN PATIENT, BUT THE NAME IS REDACTED.  
10:52AM 4 DO YOU SEE THAT?  
10:52AM 5 A. YES.  
10:52AM 6 Q. AND IT SAYS, "DR. CHEN INDICATED THE RESULTS ARE NOT  
10:52AM 7 CONSISTENT WITH PATIENT'S HISTORY. THIS IS THE ONLY PATIENT  
10:52AM 8 THAT DR. CHEN HAS SENT TO THERANOS AND THE PATIENT HAS ONLY  
10:52AM 9 COME IN ONCE."  
10:52AM 10 DO YOU SEE THAT?  
10:52AM 11 A. YES.  
10:52AM 12 Q. AND THIS WAS AN INQUIRY THAT YOU LEARNED ABOUT FROM A  
10:52AM 13 PHYSICIAN NAME DR. CHEN.  
10:53AM 14 DO YOU SEE THAT?  
10:53AM 15 A. YES.  
10:53AM 16 Q. OKAY. AND THEN THE ISSUE HAS TO DO WITH A LIPID PANEL;  
10:53AM 17 RIGHT?  
10:53AM 18 A. YES.  
10:53AM 19 Q. AND THAT'S LIKE HDL AND LDL?  
10:53AM 20 A. CORRECT.  
10:53AM 21 Q. IF YOU GO TO THE PAGE, AND WE'LL JUST USE THE BATES NUMBER  
10:53AM 22 BECAUSE THERE'S NO PAGE NUMBERS, IT'S ENDING IN 586.  
10:53AM 23 YOU SEE THERE'S AN EMAIL FROM YOU AT THE VERY BOTTOM,  
10:53AM 24 "SPOKE TO PHYSICIAN, DR. PHILIP CHEN -- HE WOULD LIKE A RERUN.  
10:53AM 25 IF THIS IS NOT POSSIBLE, WE WILL DO A REDRAW."

10:53AM 1 DO YOU SEE THAT?

10:53AM 2 A. YES.

10:53AM 3 Q. AND THEN YOUR EMAIL GOES ON TO THE NEXT PAGE, AND THEN YOU

10:53AM 4 WROTE DOWN SOME DETAILS IN FOUR BULLET POINTS.

10:53AM 5 DO YOU SEE THAT?

10:53AM 6 A. YES.

10:53AM 7 Q. AND THE FIRST BULLET POINT IS ABOUT CHOLESTEROL AND LDL

10:53AM 8 AND THEY'RE RUNNING 30 PERCENT HIGHER THAN THE PATIENT'S

10:53AM 9 BASELINE.

10:53AM 10 DO YOU SEE THAT?

10:53AM 11 A. YES.

10:53AM 12 Q. AND THEN THE SECOND BULLET SAYS THE PHYSICIAN EXPRESSED

10:53AM 13 DOUBTS REGARDING THE TECHNOLOGY?

10:53AM 14 A. YES.

10:53AM 15 Q. AND REPEATEDLY ASKED YOU ABOUT WHAT OUR METHOD IS AND HOW

10:54AM 16 WE ENSURE ACCURACY.

10:54AM 17 DO YOU SEE THAT?

10:54AM 18 A. YES.

10:54AM 19 Q. AND THEN YOU REPORT THERE, "I REPLIED THAT THERANOS

10:54AM 20 METHODS HAVE BEEN EXTENSIVELY VALIDATED AGAINST FDA APPROVED

10:54AM 21 PREDICATE METHODS -- I DIDN'T DESCRIBE THE THERANOS METHOD PER

10:54AM 22 COMPANY'S NONDISCLOSURE AND CONFIDENTIALITY RULES."

10:54AM 23 DO YOU SEE THAT?

10:54AM 24 A. YES.

10:54AM 25 Q. AND THOSE ARE YOUR WORDS, SIR?

10:54AM 1 A. I BELIEVE SO. I MEAN, THEY'RE APPENDED TO AN EMAIL THAT

10:54AM 2 CAME FROM ME, SO, YEAH.

10:54AM 3 Q. OKAY. AND THEN THE NEXT BULLET POINT YOU WROTE,

10:54AM 4 "PHYSICIAN ASKED IF HE IS THE ONLY M.D. QUERYING LIPID

10:54AM 5 RESULTS."

10:54AM 6 DO YOU SEE THAT?

10:54AM 7 A. YES.

10:54AM 8 Q. AND YOU SAID, AS YOU REPORTED IN THIS EMAIL, "I ANSWERED

10:54AM 9 THAT THE RATE OF PHYSICIAN QUERIES IS NOT HIGHER THAN MIGHT BE

10:54AM 10 EXPECTED, AND IS NOT HIGHER THAN IN MY PREVIOUS JOB AT

10:54AM 11 UNIVERSITY OF PITTSBURGH."

10:54AM 12 DO YOU SEE THAT?

10:54AM 13 A. YES.

10:54AM 14 Q. AND THAT'S WHAT YOU REPORTED TO THE PHYSICIAN WHEN HE

10:54AM 15 ASKED YOU THAT QUESTION; RIGHT?

10:54AM 16 A. YES.

10:54AM 17 Q. AND THEN YOU REPORTED THAT IN TURN TO OTHER PEOPLE AT

10:54AM 18 THERANOS?

10:54AM 19 A. YES.

10:54AM 20 Q. OKAY. LET'S GO TO THE EMAIL ABOVE THAT ONE.

10:55AM 21 AND THEN YOU SENT AN EMAIL TO AGAIN MR. MENCHEL AND

10:55AM 22 MS. AGUIRRE, AND THEN YOU COPIED TINA LIN AND NISHIT DOSHI AND

10:55AM 23 DR. YOUNG; RIGHT?

10:55AM 24 A. YES.

10:55AM 25 Q. AND BECAUSE, UNLIKE MR. MENCHEL AND AGUIRRE, THE OTHER

10:55AM 1 PEOPLE WERE PEOPLE WHO WORKED IN THE RESEARCH AND DEVELOPMENT  
10:55AM 2 OR THE CLIA LAB; RIGHT?  
10:55AM 3 A. YES.  
10:55AM 4 Q. OKAY. AND THERE YOU WROTE, "TINA/NISHIT/DANIEL,  
10:55AM 5 "CAN WE PLEASE REVIEW THE CTN IMAGE FOR THE FOLLOWING  
10:55AM 6 PATIENT, BASED ON THE QUERY BELOW?"  
10:55AM 7 DO YOU SEE THAT?  
10:55AM 8 A. YES.  
10:55AM 9 Q. AND SO THE CTN IMAGE IS BASICALLY LIKE A PHOTO OF THE CTN;  
10:55AM 10 RIGHT?  
10:55AM 11 A. YES.  
10:55AM 12 Q. AND THE CTN IS THE CAPILLARY TUBE AND NANOTAINER?  
10:55AM 13 A. YES.  
10:55AM 14 Q. AND THAT'S THE DEVICE THAT ACTUALLY COLLECT THE BLOOD FROM  
10:56AM 15 THE FINGER; RIGHT?  
10:56AM 16 A. CORRECT.  
10:56AM 17 Q. AND LOOKING AT THE IMAGE MIGHT HELP YOU UNDERSTAND IF  
10:56AM 18 THERE WAS SOME PROBLEM WITH THE WAY THE SAMPLE WAS COLLECTED;  
10:56AM 19 RIGHT?  
10:56AM 20 A. WELL, THAT WAS THE THEORY, YEAH.  
10:56AM 21 Q. OKAY. WELL, THAT'S WHAT YOU ASKED FOR?  
10:56AM 22 A. YES.  
10:56AM 23 Q. OKAY. AND THEN IF YOU GO UP THE CHAIN HERE, THERE'S AN  
10:56AM 24 EMAIL AT THE BOTTOM OF THE PAGE ENDING WITH 584, AND WE'LL JUST  
10:56AM 25 LOOK AT THE VERY TOP PART OF THAT FROM NISHIT DOSHI.

10:56AM 1 DO YOU SEE THAT?

10:56AM 2 A. YES.

10:56AM 3 Q. AND DR. DOSHI WAS SOMEONE WHO WORKED IN THE NORMANDY LAB;

10:56AM 4 CORRECT?

10:56AM 5 A. YES.

10:56AM 6 Q. AND IT SAYS, IF YOU GO TO THE NEXT PAGE AND LOOK AT THE

10:56AM 7 EMAIL, IT SAYS, "HI SUNNY,

10:56AM 8 "I AM NOT SURE IF YOU READ THIS ALREADY.

10:56AM 9 "WE ARE CONFIDENT ABOUT OUR LIPID PANEL RESULTS BASED ON

10:57AM 10 THE DAILY RUNS WHERE WE COMPARE FINGERSTICK SAMPLES TO NEAT

10:57AM 11 VENOUS (PREDICATE) ."

10:57AM 12 RIGHT?

10:57AM 13 A. YES.

10:57AM 14 Q. AND ABOVE THAT SUNNY BALWANI WRITES TO YOU, AND HE SAYS,

10:57AM 15 "ADAM,

10:57AM 16 "WE NEED TO CALL THIS DOCTOR AND BE A BIT MORE FIRM ABOUT

10:57AM 17 OUR PERFORMANCE. WE CAN DO A REDRAW BUT HIS IGNORANT COMMENTS

10:57AM 18 ARE NOT OK. YOU CAN EXPLAIN TO HIM WE RUN THOUSANDS OF SAMPLES

10:57AM 19 AND OUR SAMPLE TRACKING IS VERY TIGHT."

10:57AM 20 DO YOU SEE THAT?

10:57AM 21 A. YES.

10:57AM 22 Q. AND THEN HE SAYS, "WE CAN DO REDRAW FOR NO CHARGE TO THE

10:57AM 23 PATIENT, NO PROBLEMS."

10:57AM 24 DO YOU SEE THAT?

10:57AM 25 A. YES.

10:57AM 1 Q. AND DOCTOR -- MR. BALWANI WROTE THAT JUST TEN MINUTES  
10:57AM 2 AFTER HE GOT THE EMAIL FROM MR. DOSHI.  
10:57AM 3 DO YOU SEE THAT?  
10:57AM 4 A. YES.  
10:57AM 5 Q. AND THEN YOU WROTE IN RESPONSE, A LITTLE BIT LATER IN THE  
10:57AM 6 AFTERNOON, "SUNNY,  
10:57AM 7 "I WAS EMPHATIC WITH DR. CHEN REGARDING OUR RIGOROUS  
10:57AM 8 VALIDATION AND QUALITY PROCESS. I DO NOT AGREE WITH ANY OF  
10:58AM 9 DR. CHEN'S INSINUATIONS. IN MY EXPERIENCE, THERE ARE ALWAYS A  
10:58AM 10 HANDFUL OF M.D.'S WHO REFUSE TO ACKNOWLEDGE SCIENTIFIC DATA  
10:58AM 11 ABOUT THEIR PATIENTS. WE HAVE NOW REVIEWED THE CTN IMAGINE AND  
10:58AM 12 ALL QC IS IN ORDER."  
10:58AM 13 DO YOU SEE THAT?  
10:58AM 14 A. YES.  
10:58AM 15 Q. AND THEN YOU WROTE, "IF THERE IS FURTHER MESSAGING I  
10:58AM 16 SHOULD BE RELAYING, PLEASE LET ME KNOW."  
10:58AM 17 RIGHT?  
10:58AM 18 A. YES.  
10:58AM 19 Q. AND THEN MR. BALWANI RESPONDED, "THAT'S AWESOME, ADAM. I  
10:58AM 20 APPRECIATE IT. I THINK YOU ARE RIGHT, SOME WILL ALWAYS BE  
10:58AM 21 DOUBTERS -- HAPPENS WITH EVERY NEW TECHNOLOGY. THANKS."  
10:58AM 22 DO YOU SEE THAT?  
10:58AM 23 A. YES.  
10:58AM 24 Q. AND THAT'S WHAT YOUR EXCHANGE WITH MR. BALWANI WAS AT THAT  
10:58AM 25 TIME; RIGHT?

10:58AM 1 A. YES.

10:58AM 2 Q. OKAY. YOU CAN PUT THAT ASIDE, OR WE WILL PUT THAT ASIDE.

10:58AM 3 AND, DR. ROSENDORFF, WHEN YOU WERE AT THERANOS, YOU NEVER

10:59AM 4 OFFERED TESTS THAT YOU THOUGHT WERE INACCURATE AND UNRELIABLE

10:59AM 5 WHILE YOU WERE SERVING AS LAB DIRECTOR?

10:59AM 6 A. SO THAT'S A BIT OF A LEADING QUESTION, I THINK.

10:59AM 7 Q. I'M ALLOWED TO ASK THOSE.

10:59AM 8 (LAUGHTER.)

10:59AM 9 THE WITNESS: ONE DOESN'T KNOW AT THE TIME THAT A

10:59AM 10 RESULT IS INACCURATE. IT OFTEN COMES TO LIGHT AFTER THE FACT

10:59AM 11 WHERE A PHYSICIAN QUERIES RESULTS OR QC STARTS TO FAIL OR YOU

10:59AM 12 SEE A RASH OF ABNORMAL VALUES THAT ARE NOT EXPECTED TO OCCUR

10:59AM 13 STATISTICALLY. SO --

10:59AM 14 BY MR. COOPERSMITH:

10:59AM 15 Q. THANK YOU, DR. ROSENDORFF. BUT LET ME ASK THE QUESTION AS

10:59AM 16 PRECISELY AS I CAN,

10:59AM 17 A. UH-HUH.

10:59AM 18 Q. WHILE YOU WERE THE LAB DIRECTOR AT THERANOS, YOU NEVER

10:59AM 19 THOUGHT THAT TESTS THAT YOU WERE OFFERING AND RELEASING WERE

10:59AM 20 INACCURATE OR UNRELIABLE; CORRECT?

11:00AM 21 A. I CAME TO DOUBT THE ACCURACY OF THE TESTING, AND WHEN

11:00AM 22 THOSE DOUBTS REACHED A CERTAIN THRESHOLD, I LEFT THE COMPANY.

11:00AM 23 Q. OKAY. BUT WHILE YOU WERE AT THERANOS, YOU DID NOT RELEASE

11:00AM 24 OR AUTHORIZE THE RELEASE OF ANY RESULT THAT YOU THOUGHT WAS

11:00AM 25 INACCURATE OR UNRELIABLE? YOU WOULDN'T DO THAT; RIGHT?

11:00AM 1 A. WELL, HOW AM I SUPPOSED TO KNOW AT THE TIME WHETHER  
11:00AM 2 RESULTS ARE INACCURATE?  
11:00AM 3 Q. WELL, WHEN YOU WERE AT THERANOS, RESULTS WERE OBTAINED  
11:00AM 4 FROM THE BLOOD TESTS THAT WERE CONDUCTED ON PATIENTS; RIGHT?  
11:00AM 5 A. YES.  
11:00AM 6 Q. AND IF THE LAB BELIEVED THOSE WERE APPROPRIATE, THOSE WERE  
11:00AM 7 RELEASED TO PATIENTS; RIGHT?  
11:00AM 8 A. YES.  
11:00AM 9 Q. AND YOU NEVER RELEASED RESULTS, OR ALLOWED THAT TO HAPPEN,  
11:00AM 10 IF YOU HAD A DOUBT AS TO WHETHER THE RESULT WAS ACCURATE;  
11:00AM 11 RIGHT?  
11:00AM 12 A. IF QC PASSES AND IF PROCEDURES ARE FOLLOWED AND THERE'S NO  
11:00AM 13 DEVIATION FROM SOP, THE PROCEDURE IS TO RELEASE THE RESULTS.  
11:00AM 14 Q. AND THAT'S WHAT YOU WOULD DO?  
11:01AM 15 A. YES.  
11:01AM 16 Q. AND WHEN YOU DID THAT, YOU WERE NOT ALLOWING RESULTS TO BE  
11:01AM 17 RELEASED WITH THE BELIEF THAT THEY WERE INACCURATE OR  
11:01AM 18 UNRELIABLE; RIGHT?  
11:01AM 19 A. IT'S NOT REALLY A QUESTION OF BELIEF.  
11:01AM 20 IT'S A QUESTION OF FOLLOWING ESTABLISHED QUALITY  
11:01AM 21 PROTOCOLS.  
11:01AM 22 Q. OKAY. AND YOU NEVER PROVIDED PATIENT RESULTS THAT YOU  
11:01AM 23 KNEW WERE INACCURATE OR UNRELIABLE AT THE TIME YOU PROVIDED  
11:01AM 24 THEM; CORRECT?  
11:01AM 25 A. CORRECT.

11:01AM 1 Q. AND YOU WERE NEVER TOLD BY MR. BALWANI TO REPORT AN  
11:01AM 2 INACCURATE REPORT?

11:01AM 3 A. NO.

11:01AM 4 Q. AND YOU WERE NEVER TOLD BY MS. HOLMES TO REPORT AN  
11:01AM 5 INACCURATE REPORT?

11:01AM 6 A. NO.

11:01AM 7 Q. OKAY. DR. ROSENDORFF, LET'S SWITCH TO ANOTHER TOPIC,  
11:01AM 8 WHICH IS THE LAUNCH OF THE TESTING SERVICES AT WALGREENS.

11:02AM 9 OKAY?

11:02AM 10 A. UH-HUH.

11:02AM 11 THE COURT: LET'S HAVE -- FOLKS, STAND AND STRETCH  
11:02AM 12 IF YOU WOULD LIKE FOR JUST A MOMENT WHILE WE LOOK AT THAT.

11:02AM 13 WE'LL BREAK IN ABOUT AN HOUR.

11:02AM 14 MR. COOPERSMITH: I'M SORRY?

11:02AM 15 THE COURT: WE'LL BREAK AT NOON.

11:02AM 16 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

11:02AM 17 (STRETCHING.)

11:02AM 18 THE COURT: MR. COOPERSMITH.

11:02AM 19 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

11:02AM 20 Q. TO START OFF ON THIS TOP, DR. ROSENDORFF, CAN YOU TAKE A  
11:02AM 21 LOOK AT EXHIBIT 7314.

11:03AM 22 AND DO YOU SEE THIS IS AN EMAIL AMONG MR. BALWANI,  
11:03AM 23 MS. HOLMES, AND DR. YOUNG?

11:03AM 24 A. YES.

11:03AM 25 Q. AND YOU'RE NOT ON THIS PARTICULAR EMAIL; RIGHT?

11:03AM 1 A. NO.

11:03AM 2 Q. BUT WHILE YOU WERE AT THERANOS, YOU KNEW THERE WERE A LOT

11:03AM 3 OF EMAILS GOING BACK AND FORTH AMONG VARIOUS PEOPLE THAT YOU

11:03AM 4 WERE NOT NECESSARILY ON THE EMAIL; RIGHT?

11:03AM 5 A. YEAH. THERE WERE A LOT OF EMAILS THAT I SHOULD HAVE BEEN

11:03AM 6 ON THAT I WASN'T.

11:03AM 7 Q. OKAY. BUT THERE WERE SOME, EVEN IF YOU SHOULD OR

11:03AM 8 SHOULDN'T HAVE BEEN ON THEM, YOU KNEW THAT THERE WERE OTHER

11:03AM 9 EMAILS BEING SENT WHERE YOU WERE NOT ON THE EMAILS; RIGHT?

11:03AM 10 A. ARE YOU ASKING ME IF I WAS CC'D ON EVERY EMAIL

11:03AM 11 COMMUNICATION IN THE COMPANY?

11:03AM 12 Q. RIGHT. AND OF COURSE YOU WEREN'T; RIGHT?

11:03AM 13 A. NO.

11:03AM 14 Q. AND SOMETIMES YOU SENT EMAILS AND YOU DIDN'T COPY

11:03AM 15 EVERYONE?

11:03AM 16 A. NO, NO.

11:03AM 17 Q. OKAY. AND -- BUT YOU UNDERSTOOD THAT IN THERANOS, AS WE

11:04AM 18 DISCUSSED BEFORE, EMAILS WERE THE SYSTEM USED TO TRANSMIT

11:04AM 19 INFORMATION; RIGHT?

11:04AM 20 A. YES.

11:04AM 21 Q. AND PEOPLE LIKE DR. YOUNG WERE TRANSMITTING INFORMATION

11:04AM 22 FOR THE PURPOSE OF TRYING TO GET THERANOS'S WORK DONE?

11:04AM 23 MR. BOSTIC: FOUNDATION.

11:04AM 24 THE COURT: YOU'RE DOING THAT NOW?

11:04AM 25 MR. COOPERSMITH: I AM TRYING, YOUR HONOR.

11:04AM 1 Q. SO, DR. ROSENDORFF, YOU RECEIVED A LOT OF EMAILS FROM  
11:04AM 2 DR. YOUNG; RIGHT?  
11:04AM 3 A. YES.  
11:04AM 4 Q. AND YOU SENT A LOT OF EMAILS TO DR. YOUNG?  
11:04AM 5 A. YES.  
11:04AM 6 Q. AND WHEN DR. YOUNG COMMUNICATED WITH YOU BY EMAIL, HE WAS  
11:04AM 7 TRYING TO PROVIDE INFORMATION TO YOU THAT WOULD BE USED IN THE  
11:04AM 8 COURSE OF THE WORK AT THERANOS; RIGHT?  
11:04AM 9 A. YES.  
11:04AM 10 Q. AND THAT SOMETIMES IT WOULD HAVE INFORMATION ABOUT THE  
11:04AM 11 STATUS OF ASSAYS AND THINGS LIKE THAT?  
11:04AM 12 A. YES.  
11:04AM 13 Q. AND THAT YOU UNDERSTOOD THAT WAS NECESSARY TO TAKE FURTHER  
11:04AM 14 ACTION IF APPROPRIATE; RIGHT?  
11:04AM 15 A. YES.  
11:04AM 16 Q. AND THAT WHEN THAT HAPPENED, THERE WOULD BE A NEED TO HAVE  
11:04AM 17 THE INFORMATION BE ACCURATE SO THE ACTION COULD BE BASED ON  
11:05AM 18 ACCURATE INFORMATION; CORRECT?  
11:05AM 19 A. YES.  
11:05AM 20 Q. AND THERANOS HAD A SYSTEM OF STORING EMAILS SO IF SOMEONE  
11:05AM 21 NEEDED TO REFER TO THEM LATER, THAT COULD HAPPEN; RIGHT?  
11:05AM 22 A. YES, I BELIEVE SO.  
11:05AM 23 Q. AND IF YOU LOOK AT 7314, EVEN THOUGH YOU'RE NOT ON IT,  
11:05AM 24 THIS IS ONE OF THOSE EMAILS WHERE DR. YOUNG IS TRANSMITTING  
11:05AM 25 INFORMATION ABOUT THE STATUS OF CERTAIN ASSAYS PRIOR TO THE

11:05AM 1 LAUNCH OF WALGREENS; RIGHT?

11:05AM 2 A. YES, IT APPEARS SO.

11:05AM 3 MR. COOPERSMITH: YOUR HONOR, WE OFFER 7314

11:05AM 4 AUTHENTIC PURSUANT TO THE PARTIES' STIPULATION, ON BATES

11:05AM 5 NUMBERS, AND IT'S A BUSINESS RECORD.

11:05AM 6 MR. BOSTIC: HEARSAY, YOUR HONOR.

11:05AM 7 THE COURT: ARE YOU INTENDING TO INCLUDE THE

11:05AM 8 ATTACHMENT?

11:05AM 9 MR. COOPERSMITH: I DON'T NEED THE ATTACHMENT,

11:05AM 10 YOUR HONOR. IT'S REALLY JUST THE TWO PAGE EMAIL.

11:05AM 11 THE COURT: ALL RIGHT.

11:05AM 12 MR. BOSTIC: SAME OBJECTION, YOUR HONOR. HEARSAY

11:05AM 13 GIVEN THAT THIS WITNESS IS NOT ON THE --

11:05AM 14 THE COURT: IS THIS BEING OFFERED AS A BUSINESS

11:06AM 15 RECORD?

11:06AM 16 MR. COOPERSMITH: YES, YOUR HONOR.

11:06AM 17 THE COURT: I'LL ADMIT IT AS A BUSINESS RECORD UNDER

11:06AM 18 803(6). THE FOUNDATION HAS BEEN LAID, AND IT MAY BE PUBLISHED.

11:06AM 19 NOT THE ATTACHMENT.

11:06AM 20 (DEFENDANT'S EXHIBIT 7314 WAS RECEIVED IN EVIDENCE.)

11:06AM 21 MR. COOPERSMITH: YES, YOUR HONOR.

11:06AM 22 MR. ALLEN, JUST THE EMAIL ITSELF AND NOT THE ATTACHMENT.

11:06AM 23 Q. OKAY. LOOKING AT THE EMAIL, IS EXHIBIT 7314, YOU SEE THIS

11:06AM 24 IS AN EMAIL FROM DR. YOUNG AND TO MS. HOLMES AND MR. BALWANI?

11:06AM 25 A. YES.

11:06AM 1 Q. AND IT'S DATED AUGUST 19TH, 2013?

11:06AM 2 A. YES.

11:06AM 3 Q. AND THE SUBJECT IS TEST LAUNCH LIST.

11:06AM 4 DO YOU SEE THAT?

11:06AM 5 A. YES.

11:06AM 6 Q. OKAY. AND IT SAYS, "THE CURRENT LAUNCH LIST COVERS 200

11:06AM 7 TESTS, IN BOTH BLOOD AND URINE SAMPLES."

11:06AM 8 A. YES.

11:06AM 9 Q. "THE COLLECTION OF THESE REPORTABLES COVERS MORE THAN

11:06AM 10 97 PERCENT OF TEST FREQUENCY FOR THESE TWO MATRICES."

11:06AM 11 DO YOU SEE THAT?

11:06AM 12 A. YES.

11:06AM 13 Q. AND THEN IT SAYS, "BLOOD TESTS FOR LAUNCH INCLUDE GENERAL

11:06AM 14 CHEMISTRY, ELISA, AND CYTOMETRY."

11:07AM 15 A. YES.

11:07AM 16 Q. AND THEN IT DESCRIBES A TOTAL OF 158 TESTS/REPORTABLES"?

11:07AM 17 A. YES.

11:07AM 18 Q. AND THEN ON -- GOING DOWN A FEW MORE BULLETS DOWN, IT

11:07AM 19 SAYS, "92 ARE ELISA."

11:07AM 20 A. YES.

11:07AM 21 Q. AND THOSE ARE THE IMMUNOASSAYS?

11:07AM 22 A. YES.

11:07AM 23 Q. AND THEN IT SAYS 62 ON EDISON?

11:07AM 24 A. YES.

11:07AM 25 Q. AND THEN 30 ON ADVIA WITH SIEMENS CHEMISTRY; RIGHT?

11:07AM 1 A. YES.

11:07AM 2 Q. AND STICKING TO THE 62 ON EDISON NUMBER, WHEN THERANOS

11:07AM 3 LAUNCHED WITH WALGREENS, THERE WERE NOT 62 ASSAYS ON EDISON

11:07AM 4 ACTUALLY PUT IN OPERATION; RIGHT?

11:07AM 5 A. CAN YOU JUST REMIND ME OF THE DATE OF THIS EMAIL?

11:07AM 6 Q. SURE. IT'S AUGUST 19TH, 2013.

11:07AM 7 A. OH, UM -- YEAH, NO. MY RECOLLECTION IS IT WAS JUST ONE OR

11:07AM 8 TWO THAT WERE VALIDATED ON THE EDISON AT THAT TIME.

11:07AM 9 Q. AT THAT TIME?

11:07AM 10 A. CORRECT.

11:07AM 11 Q. AND THEN EVEN GOING FORWARD DURING THE REST OF YOUR TIME

11:08AM 12 AT THERANOS, ULTIMATELY THERANOS I THINK PUT A TOTAL OF ABOUT

11:08AM 13 12 ON EDISONS; IS THAT RIGHT?

11:08AM 14 A. IT SOUNDS ABOUT RIGHT.

11:08AM 15 Q. OKAY. AND NOT 62; RIGHT?

11:08AM 16 A. NO.

11:08AM 17 Q. BUT DR. YOUNG SAYS HERE THAT 62 ON EDISON IS AT LEAST PART

11:08AM 18 OF THE LAUNCH LIST AT THIS TIME AS FAR AS THIS EMAIL IS

11:08AM 19 CONCERNED?

11:08AM 20 A. YES, THAT'S WHAT HE'S REPRESENTING TO MR. BALWANI AND

11:08AM 21 MS. HOLMES.

11:08AM 22 Q. YES. THANK YOU.

11:08AM 23 A. YES.

11:08AM 24 Q. AND, AND I THINK YOU TALKED ABOUT THIS IN YOUR DIRECT

11:08AM 25 EXAMINATION WHEN MR. BOSTIC WAS QUESTIONING YOU, BUT AN EDISON

11:08AM 1 DEVICE, IT CAN RUN A SAMPLE, BUT IT CAN'T RUN, YOU KNOW,

11:08AM 2 MULTIPLE PATIENT SAMPLES AT ONCE; RIGHT?

11:08AM 3 A. NO, IT CANNOT.

11:08AM 4 Q. RIGHT. BUT A SIEMENS ADVIA CAN RUN MULTIPLE PATIENT

11:08AM 5 SAMPLES AT ONCE; RIGHT?

11:08AM 6 A. NO, IT CANNOT.

11:08AM 7 Q. OKAY. IT CAN'T DO THAT EITHER?

11:08AM 8 A. NO.

11:08AM 9 Q. BUT IN TERMS OF, LIKE, TAKING AN HOUR OF TIME, A

11:08AM 10 SIEMENS ADVIA CAN RUN MANY MORE SAMPLES IN AN HOUR THAN A

11:09AM 11 THERANOS MACHINE COULD?

11:09AM 12 A. CORRECT.

11:09AM 13 Q. AND THAT'S WHAT A SIEMENS ADVIA OR OTHER COMMERCIAL

11:09AM 14 EQUIPMENT LIKE THAT IS DESIGNED TO DO; RIGHT?

11:09AM 15 A. YES.

11:09AM 16 Q. AND IT'S FOR HIGH VOLUME OPERATION; RIGHT?

11:09AM 17 A. CORRECT.

11:09AM 18 Q. AND YOU UNDERSTAND THAT THE EDISON, AS DESIGNED, WAS NOT

11:09AM 19 REALLY DESIGNED TO RUN IN A CENTRAL LAB THAT WAS GETTING

11:09AM 20 HUNDREDS OF THOUSANDS OF SAMPLES A DAY; RIGHT?

11:09AM 21 A. I WOULD BE SPECULATING ON THE INTENT OF THAT INSTRUMENT.

11:09AM 22 Q. OKAY. BUT YOU, IN ANY EVENT, UNDERSTOOD THAT THE SIEMENS

11:09AM 23 DEVICE OR OTHER COMMERCIAL DEVICES THAT WERE MEANT FOR HIGH

11:09AM 24 VOLUME COULD RUN MANY MORE SAMPLES PER HOUR; RIGHT?

11:09AM 25 A. THAT WAS THE REALITY, YEAH.

11:09AM 1 Q. AND SOMETIMES THAT TOPIC IS REFERRED TO AS HIGH  
11:09AM 2 THROUGHPUT; RIGHT?  
11:09AM 3 A. YES, YES.  
11:09AM 4 Q. AND IF YOU'RE COLLECTING A LOT OF SAMPLES IN VARIOUS  
11:09AM 5 LOCATIONS SUCH AS WALGREENS STORES, IT MIGHT BE ADVANTAGEOUS TO  
11:09AM 6 HAVE A HIGH THROUGHPUT WAY OF RUNNING THE SAMPLES; RIGHT?  
11:09AM 7 A. THERE'S DIFFERENT MODELS DEPENDING ON SAMPLE VOLUME,  
11:10AM 8 CLINICAL SETTING.  
11:10AM 9 Q. OKAY. BUT IN ANY EVENT, IF THERANOS WAS COLLECTING  
11:10AM 10 SAMPLES AT WALGREENS STORES AND SHIPPING THOSE ALL TO A CENTRAL  
11:10AM 11 LABORATORY IT WAS RUNNING, IT COULD RUN THOSE FASTER ON SIEMENS  
11:10AM 12 MACHINES COMPARED TO AN EDISON DEVICE; RIGHT?  
11:10AM 13 A. I'M NOT SURE WHY YOU'RE COMPARING THE SIEMENS DEVICE TO  
11:10AM 14 THE EDISON, BECAUSE THE EDISON IS IMMUNOASSAY AND THE IMMULITE  
11:10AM 15 WAS THE IMMUNOASSAY, AND SO THAT'S MORE OF AN APPLES TO APPLES  
11:10AM 16 COMPARISON.  
11:10AM 17 Q. OKAY. FAIR ENOUGH.  
11:10AM 18 SO LET'S TALK ABOUT THE IMMULITE IN THIS CASE; RIGHT?  
11:10AM 19 A. YEAH.  
11:10AM 20 Q. THE IMMULITE COULD ALSO RUN MORE SAMPLES PER HOUR THAN THE  
11:10AM 21 EDISON DEVICE?  
11:10AM 22 A. YES.  
11:10AM 23 Q. OKAY. AND THAT IF THERANOS WAS COLLECTING SAMPLES FROM  
11:10AM 24 WALGREENS STORES AND SHIPPING THEM TO A CENTRAL LABORATORY, IT  
11:10AM 25 COULD RUN MANY MORE OF THOSE SAMPLES PER HOUR ON AN IMMULITE

11:11AM 1 COMPARED TO AN EDISON?

11:11AM 2 A. CORRECT.

11:11AM 3 Q. OKAY. AND THAT'S TRUE IF YOU WERE RUNNING A MODIFIED

11:11AM 4 IMMULITE; RIGHT?

11:11AM 5 A. CORRECT.

11:11AM 6 Q. SO THE SAME THROUGHPUT ISSUE, JUST DIFFERENT SAMPLE SIZE;

11:11AM 7 RIGHT?

11:11AM 8 A. SO YOU'RE ASKING IF THE MODIFIED IMMULITE HAS THE SAME

11:11AM 9 THROUGHPUT CAPABILITY AS AN UNMODIFIED IMMULITE ASSAY?

11:11AM 10 Q. RIGHT. AND IT DOES; RIGHT?

11:11AM 11 A. I DON'T KNOW.

11:11AM 12 Q. BUT IN ANY EVENT, THE IMMULITE --

11:11AM 13 A. I MEAN, I WOULD SAY NO BECAUSE YOU'VE GOT TO DILUTE THE

11:11AM 14 SAMPLE FIRST TO RUN IT --

11:11AM 15 Q. OKAY.

11:11AM 16 A. -- MODIFIED ON THE IMMULITE. SO I WOULD SAY NO. YEAH, IT

11:11AM 17 TAKES LONGER.

11:11AM 18 Q. BECAUSE YOU HAVE THAT STEP OF PREDILUTION?

11:11AM 19 A. YEAH, YEAH.

11:11AM 20 Q. AS OPPOSED TO WHEN YOU'RE RUNNING IT MODIFIED, WHATEVER

11:11AM 21 DILUTION IT WAS DOING IT WOULD BE INTERNAL TO THE MACHINE?

11:11AM 22 A. I DON'T KNOW ABOUT INTERNAL DILUTIONS IN THE IMMULITES.

11:11AM 23 Q. OKAY. WE MAY LOOK AT THAT AT SOME POINT.

11:11AM 24 A. OKAY.

11:11AM 25 Q. BUT IN ANY EVENT, THE MODIFIED IMMULITE COULD RUN MORE

11:12AM 1 SAMPLES PER HOUR COMPARED TO AN EDISON; RIGHT?

11:12AM 2 A. YES.

11:12AM 3 Q. OKAY. AND YOU WERE, I TAKE IT, NOT INVOLVED IN THE

11:12AM 4 BUSINESS OPERATIONS OF THERANOS?

11:12AM 5 A. NOT AT ALL, NO.

11:12AM 6 Q. OR IN THE DISCUSSIONS THAT THERANOS HAD WITH WALGREENS?

11:12AM 7 A. NO, NOT AT ALL.

11:12AM 8 Q. OR ABOUT WHAT MADE SENSE FOR, YOU KNOW, DOING BUSINESS

11:12AM 9 WITH WALGREENS AND COLLECTING SAMPLES?

11:12AM 10 A. NO. THAT WASN'T MY JOB.

11:12AM 11 Q. AND YOU DON'T KNOW ANYTHING ABOUT THE CONTRACTS BETWEEN

11:12AM 12 THERANOS AND WALGREENS?

11:12AM 13 A. NO, DEFINITELY NOT, NO.

11:12AM 14 Q. AND WHAT THOSE SAMPLES WOULD SAY ABOUT HOW SAMPLES ARE

11:12AM 15 COLLECTED?

11:12AM 16 A. NO.

11:12AM 17 Q. OKAY. LEADING UP TO THE LAUNCH, THERE WERE QUITE A FEW

11:12AM 18 TESTS THAT HAD TO BE ACCOMPLISHED IN ORDER TO ACTUALLY GO LIVE

11:12AM 19 WITH WALGREENS, SO TO SPEAK; RIGHT?

11:13AM 20 A. YES.

11:13AM 21 Q. AND WE TALKED ABOUT ASSAY VALIDATION; RIGHT?

11:13AM 22 A. YES.

11:13AM 23 Q. AND THERE WERE ALSO A LOT OF LOGISTICAL TASKS THAT HAD TO

11:13AM 24 BE COMPLETED; CORRECT?

11:13AM 25 A. YES.

11:13AM 1 Q. AND THERE HAD TO BE A FUNCTIONING LABORATORY INFORMATION  
11:13AM 2 SYSTEM?  
11:13AM 3 A. CORRECT.  
11:13AM 4 Q. IN ORDER TO START THE PROGRAM WITH WALGREENS?  
11:13AM 5 A. CORRECT.  
11:13AM 6 Q. OKAY. LET'S TAKE A LOOK AT EXHIBIT 1049, WHICH I BELIEVE  
11:13AM 7 IS ALREADY IN EVIDENCE FROM YOUR DIRECT EXAMINATION.  
11:13AM 8 EXHIBIT 1049 IS AN EMAIL FROM AUGUST 29TH, 2013.  
11:14AM 9 DO YOU SEE THAT?  
11:14AM 10 A. YES.  
11:14AM 11 Q. AND THEN IN THE BOTTOM YOU ARE INFORMING MS. HOLMES AND  
11:14AM 12 DR. YOUNG THAT YOU HAVE SOME MEDICAL AND OPERATIONAL CONCERNS  
11:14AM 13 ABOUT OUR READINESS FOR SEPTEMBER 9TH.  
11:14AM 14 DO YOU SEE THAT?  
11:14AM 15 A. YES.  
11:14AM 16 Q. AND YOU HAVE TWO CATEGORIES OF CONCERN. THE FIRST IS  
11:14AM 17 MEDICAL.  
11:14AM 18 DO YOU SEE THAT?  
11:14AM 19 A. YES.  
11:14AM 20 Q. AND THE FIRST HEADING UNDER MEDICAL IS GLUCOSE?  
11:14AM 21 A. YES.  
11:14AM 22 Q. AND YOU DISCUSS SIGNIFICANT NEGATIVE BIAS; RIGHT?  
11:14AM 23 A. YES.  
11:14AM 24 Q. OKAY. IF YOU WOULD GO TO THE NEXT PAGE AND GO DOWN THE  
11:14AM 25 EMAIL.

11:14AM 1 THEN YOUR SECOND HEADING FOR MEDICAL CONCERNS IS SODIUM?

11:14AM 2 A. YES.

11:14AM 3 Q. AND THEN THE OTHER SET OF CONCERNS YOU HAD TO DO WITH WERE

11:14AM 4 OPERATIONAL CONCERNS; RIGHT?

11:14AM 5 A. YES.

11:14AM 6 Q. AND THEN IT HAD TO DO WITH TRAINING ON THE NEW PROTOCOLS

11:14AM 7 AND ISSUES WITH OTHER THINGS; RIGHT?

11:14AM 8 A. YES.

11:14AM 9 Q. AND THEN IF YOU GO TO THE TOP OF THE FIRST PAGE OR THE TOP

11:15AM 10 EMAIL, AND THEN YOU SEE MS. HOLMES FORWARDS THAT TO

11:15AM 11 MR. BALWANI?

11:15AM 12 A. YES.

11:15AM 13 Q. AND THAT MR. BALWANI WRITES AT THE TOP, "I ASSUME WE CAN

11:15AM 14 USE SIEMENS CHEMISTRY FOR GLUCOSE AND SODIUM? IF YES THEN WE

11:15AM 15 SHOULD."

11:15AM 16 RIGHT?

11:15AM 17 A. IS THAT WHAT YOU'RE ASKING ME IF THAT'S WHAT THE TEXT ON

11:15AM 18 THE SCREEN SAYS?

11:15AM 19 Q. THAT'S ALL I'M ASKING YOU FOR THE MOMENT.

11:15AM 20 A. YES.

11:15AM 21 Q. OKAY.

11:15AM 22 A. YES.

11:15AM 23 Q. AND IT HAS ANOTHER DISCUSSION ABOUT OPERATIONAL, "WE

11:15AM 24 SHOULD TELL HIM WE WILL LIMIT NUMBER OF SAMPLES."

11:15AM 25 AND IF THERE WERE FEWER SAMPLES COMING IN, IT WOULD BE

11:15AM 1 EASIER TO DEAL WITH LOGISTICS AND OPERATIONS IF YOU HAD  
11:15AM 2 RELATIVELY FEW SAMPLES COMING IN AS OPPOSED TO MANY SAMPLES?  
11:15AM 3 A. TRUE.  
11:15AM 4 Q. OKAY. BUT ON THE CHEMISTRY ISSUE, MR. BALWANI SAYS, "I  
11:15AM 5 ASSUME WE CAN USE SIEMENS CHEMISTRY FOR GLUCOSE AND SODIUM?"  
11:15AM 6 RIGHT?  
11:15AM 7 A. YES.  
11:15AM 8 Q. AND THAT WOULD BE LIKE USING THE FDA APPROVED SIEMENS  
11:16AM 9 MACHINE AS OPPOSED TO ANYTHING THAT THERANOS DEVELOPED; RIGHT?  
11:16AM 10 A. WELL, THE SIEMENS MACHINE WAS USED IN BOTH CASES, SO I'M  
11:16AM 11 NOT SURE WHAT MR. BALWANI MEANS BY THIS.  
11:16AM 12 Q. RIGHT.  
11:16AM 13 BUT YOU UNDERSTAND SIEMENS CHEMISTRY REFERS TO THE SIEMENS  
11:16AM 14 CHEMISTRY AS OPPOSED TO THE THERANOS ASSAY; RIGHT?  
11:16AM 15 A. SO SOME OF THE THERANOS TESTS USED SIEMENS CHEMISTRY AND  
11:16AM 16 SOME OF THEM USED THERANOS DEVELOPED CHEMISTRIES.  
11:16AM 17 Q. OKAY. BUT MR. BALWANI WAS -- WELL, YOU UNDERSTAND THAT IF  
11:16AM 18 MR. BALWANI WAS COMMUNICATING THAT UNMODIFIED PREDICATE SHOULD  
11:16AM 19 BE USED, HE WAS ACTUALLY AGREEING THAT IF YOU HAD CONCERNS  
11:16AM 20 ABOUT GLUCOSE AND SODIUM ON THERANOS DEVICES, THAT SHOULDN'T BE  
11:16AM 21 IMPLEMENTED UNTIL THOSE CONCERNS WERE RESOLVED; RIGHT?  
11:16AM 22 A. I CAN'T SPECULATE ON MR. BALWANI'S INTENT OR MEANING HERE.  
11:17AM 23 IT'S JUST VERY UNCLEAR TO ME WHAT HE MEANS BY THIS, I'M SORRY.  
11:17AM 24 Q. OKAY. DR. ROSENDORFF, IN FACT, YOU EXPRESSED THESE  
11:17AM 25 CONCERNS ABOUT THESE TWO ASSAYS, SODIUM AND GLUCOSE, ON

11:17AM 1 AUGUST 29TH, PRIOR TO THE WALGREENS LAUNCH; RIGHT?

11:17AM 2 A. IN THIS EMAIL YOU MEAN?

11:17AM 3 Q. YES.

11:17AM 4 A. YES, YES.

11:17AM 5 Q. OKAY. AND YOU WOULD NOT HAVE WANTED THOSE ASSAYS TO GO

11:17AM 6 ONLINE ON THERANOS ASSAYS IF YOU WERE NOT SATISFIED THAT THEY

11:17AM 7 WERE APPROPRIATE; RIGHT?

11:17AM 8 A. CORRECT.

11:17AM 9 Q. AND IF YOU COULD TAKE A LOOK AT EXHIBIT 9352.

11:17AM 10 9352 IS IN EVIDENCE AND IT'S A VALIDATION REPORT FOR

11:18AM 11 MODIFIED SIEMENS ASSAY OF SODIUM.

11:18AM 12 DO YOU SEE THAT?

11:18AM 13 A. YES.

11:18AM 14 Q. AND THAT'S SIGNED BY YOU ON MARCH 24TH, 2014; RIGHT?

11:18AM 15 A. SOMETHING DOESN'T MAKE SENSE HERE BECAUSE AT THE DATE AT

11:18AM 16 THE TOP IS SEPTEMBER 26TH, 2013, AND MY SIGNATURE SAYS

11:18AM 17 MARCH 24, 2014.

11:18AM 18 Q. WELL, YOU WROTE THAT DATE RIGHT NEXT TO YOUR SIGNATURE

11:18AM 19 BLOCK; RIGHT?

11:18AM 20 A. YES.

11:18AM 21 Q. AND SO YOU DATED THE DOCUMENT MARCH 24TH, 2014; RIGHT?

11:18AM 22 A. IT APPEARS THAT'S WHEN IT WAS PRESENTED TO ME BUT --

11:18AM 23 Q. SO EVEN IF THE DOCUMENT WAS PREPARED BY SOMEONE ON

11:18AM 24 SEPTEMBER 26TH, 2014, YOU DIDN'T SIGN IT UNTIL MARCH 24TH,

11:18AM 25 2014; RIGHT?

11:18AM 1 DR. ROSENDORFF, EVEN IF THE DOCUMENT WAS PREPARED AT THE  
11:18AM 2 END OF SEPTEMBER 2013, YOU DIDN'T SIGN IT UNTIL MARCH 24TH,  
11:19AM 3 2014; RIGHT?  
11:19AM 4 A. WELL, THAT'S WHAT IT LOOKS LIKE.  
11:19AM 5 BUT AS I SAID BEFORE, THERE WAS NO DOCUMENT CONTROL AT  
11:19AM 6 THERANOS. SO THAT DATE OF SEPTEMBER 26TH, 2013 IS -- REALLY,  
11:19AM 7 REALLY CAN'T BE TRUSTED. WE KNOW THESE DOCUMENTS OR REVISIONS  
11:19AM 8 WERE PROTECTED OR WERE NOT RECORDED IN A CONTROLLED WAY IN A  
11:19AM 9 SOFTWARE SYSTEM.  
11:19AM 10 GO AHEAD, SORRY.  
11:19AM 11 Q. THAT'S OKAY.  
11:19AM 12 I HEAR YOU SAYING THAT. BUT THE DOCUMENT CONTROL ISSUES  
11:19AM 13 YOU'RE NOW REFERRING TO, THAT DIDN'T AFFECT THE DATE THAT YOU  
11:19AM 14 PUT NEXT TO YOUR SIGNATURE, DOES IT?  
11:19AM 15 A. IT AFFECTS THE RELEVANCE OF THAT DATE VERSUS WHAT IS AT  
11:19AM 16 THE TOP OF THE DOCUMENT.  
11:19AM 17 Q. OKAY.  
11:19AM 18 A. OR EVEN THE TITLE OF THE DOCUMENT. I MEAN, YES, THAT'S MY  
11:19AM 19 HANDWRITING, AND THAT'S THE DATE I PUT DOWN.  
11:19AM 20 BUT WHAT AM I CERTIFYING TO THERE?  
11:19AM 21 Q. IT SAYS APPROVER.  
11:20AM 22 DO YOU SEE THAT?  
11:20AM 23 A. YES.  
11:20AM 24 Q. AND THEN YOU SIGNED YOUR SIGNATURE OVER THE  
11:20AM 25 ADAM ROSENDORFF, M.D.

11:20AM 1 DO YOU SEE THAT?

11:20AM 2 A. YES.

11:20AM 3 Q. AND THEN IT HAS DATE, AND IT HAS THE TITLE LABORATORY

11:20AM 4 DIRECTOR; RIGHT?

11:20AM 5 A. YES.

11:20AM 6 Q. AND THEN YOU DATED IT MARCH 24TH, '14; RIGHT?

11:20AM 7 A. BUT HOW DOES THAT RELATE TO THE REST OF THIS EXHIBIT, SIR?

11:20AM 8 Q. OKAY. I DON'T INTEND TO ANSWER YOUR QUESTION, BUT I'M

11:20AM 9 ASKING ANOTHER QUESTION TO SEE IF WE CAN CLARIFY THIS.

11:20AM 10 SO, DR. ROSENDORFF, MARCH 24TH, 2014, IS MANY MONTHS AFTER

11:20AM 11 THE PREVIOUS EXHIBIT WE SAW AND WE EXPRESSED CONCERN ABOUT

11:20AM 12 SODIUM; RIGHT?

11:20AM 13 A. CORRECT.

11:20AM 14 Q. AND, IN FACT, IT'S GOING FROM AUGUST ALL OF THE WAY UNTIL

11:20AM 15 MARCH. SO IT'S ABOUT SEVEN MONTHS; RIGHT?

11:20AM 16 A. YES.

11:20AM 17 Q. TURNING TO THE OTHER CONCERN YOU HAD --

11:20AM 18 A. ARE YOU ASSERTING THAT MY SIGNATURE APPLIES TO THIS

11:21AM 19 DOCUMENT?

11:21AM 20 Q. SIR, YOU PUT YOUR SIGNATURE ON VALIDATION REPORTS?

11:21AM 21 A. CORRECT.

11:21AM 22 Q. THIS IS ONE OF THEM?

11:21AM 23 A. WELL, AS I'VE SAID, THERE'S NO, THERE WAS NO DOCUMENT

11:21AM 24 CONTROL AT THERANOS, SO I CAN'T VOUCH FOR THE FACT THAT THE

11:21AM 25 SIGNATURE RELATES TO THIS DOCUMENT.

11:21AM 1 Q. OKAY. SO -- WELL, LET'S EXPLORE THAT SINCE YOU SAY THAT.

11:21AM 2 IF YOU LOOK AT THE BODY OF THE DOCUMENT, YOU SEE -- AND

11:21AM 3 WE'RE TALKING ABOUT EXHIBIT 9352, AND IF YOU GO TO PAGE 2 OF

11:21AM 4 THE DOCUMENT --

11:21AM 5 A. YES.

11:21AM 6 Q. -- YOU SEE THERE'S THE SODIUM PLASMA ASSAY?

11:21AM 7 A. YES.

11:21AM 8 Q. AND THEN THERE IS DIFFERENT SECTIONS OF THE DOCUMENT THAT

11:21AM 9 ARE LISTED THERE?

11:21AM 10 A. YES.

11:21AM 11 Q. AND THOSE ARE THE VALIDATION REQUIREMENTS THAT HAVE TO BE

11:21AM 12 DONE FOR AN ASSAY; RIGHT?

11:21AM 13 A. YES.

11:21AM 14 Q. AND THEN THE REST OF THE DOCUMENT ACTUALLY GOES THROUGH

11:21AM 15 THE PAGES OF THE DOCUMENT TO GO THROUGH THE DATA AND WHAT

11:22AM 16 HAPPENED WITH THE VALIDATION; RIGHT?

11:22AM 17 A. YES.

11:22AM 18 Q. AND YOU PUT YOUR SIGNATURE ON THE COVER PAGE ON

11:22AM 19 MARCH 24TH, 2014; RIGHT?

11:22AM 20 A. IT APPEARS SO.

11:22AM 21 Q. OKAY. AND YOU DON'T HAVE ANY EVIDENCE AS YOU SIT HERE

11:22AM 22 TODAY THAT THIS DOCUMENTS IS NOT WHAT YOU SIGNED; CORRECT?

11:22AM 23 A. I WOULD NOT HAVE SIGNED A DOCUMENT IN MARCH OF 2014 IF THE

11:22AM 24 ASSAY HAD GONE LIVE IN EARLY 2013. I WOULD NOT HAVE DONE THAT.

11:22AM 25 Q. THANK YOU, DR. ROSENDORFF.

11:22AM 1 BUT YOU WOULD HAVE SIGNED IT IF IT DIDN'T GO LIVE; RIGHT?

11:22AM 2 A. CORRECT.

11:22AM 3 Q. RIGHT. SO IF THE ASSAY DIDN'T GO LIVE IN 2013, YOU COULD

11:22AM 4 HAVE SIGNED IT IN MARCH OF 2014 WHEN YOU DEEMED IT APPROPRIATE

11:22AM 5 TO DO SO; RIGHT?

11:22AM 6 A. CORRECT.

11:22AM 7 Q. OKAY. LET'S GO TO EXHIBIT 9184.

11:23AM 8 AND CAN YOU SEE IT ON YOUR SCREEN, DR. ROSENDORFF?

11:23AM 9 A. YES.

11:23AM 10 Q. AND THIS IS NOT IN EVIDENCE. IT'S TITLED VALIDATION OF

11:23AM 11 MODIFIED THERANOS GLUCOSE ASSAY.

11:23AM 12 DO YOU SEE THAT?

11:23AM 13 A. YES.

11:23AM 14 Q. AND, IN FACT, YOUR SIGNATURE DOESN'T APPEAR ON THIS

11:23AM 15 DOCUMENT AT ALL; RIGHT?

11:23AM 16 A. IT DOES NOT.

11:23AM 17 Q. AND YOU HAVE NO RECOLLECTION OF EVER SIGNING A GLUCOSE

11:23AM 18 VALIDATION REPORT AT THERANOS; RIGHT?

11:23AM 19 A. I BELIEVE I DID ACTUALLY.

11:23AM 20 Q. OKAY. WELL, IF THAT EXISTS, I'M SURE WE'LL SEE THAT AT

11:23AM 21 SOME POINT.

11:23AM 22 A. OKAY.

11:23AM 23 Q. OKAY. LET'S GO TO EXHIBIT 7324. IT'S ALWAYS THE LAST

11:24AM 24 PLACE YOU LOOK.

11:24AM 25 Q. OKAY. TURNING TO EXHIBIT 7324. DO YOU SEE THIS IS AN

11:24AM 1 EMAIL STRING AMONG YOU, DR. YOUNG, AND DR. GANGAKHEDKAR?

11:24AM 2 DO YOU SEE THAT?

11:24AM 3 A. I'M SORRY. THERE'S NOTHING THAT IS APPEARING ON MY SCREEN

11:24AM 4 RIGHT NOW.

11:24AM 5 OH THERE IT IS. THERE IT IS. UH-HUH.

11:24AM 6 Q. GREAT. DO YOU SEE THE EMAIL HEADER THERE?

11:25AM 7 A. YES.

11:25AM 8 Q. AND THEN THIS IS AROUND SEPTEMBER 7TH, 2013?

11:25AM 9 A. YES.

11:25AM 10 Q. AND IT RELATES TO CERTAIN ASSAYS THAT WERE -- THE COMPANY

11:25AM 11 WAS WORKING ON IN CONNECTION WITH THE WALGREENS LAUNCH?

11:25AM 12 A. YES.

11:25AM 13 Q. AND THIS IS ANOTHER ONE OF THOSE EMAILS THAT WAS

11:25AM 14 TRANSMITTED AMONG THERANOS PERSONNEL TO DO THE WORK THAT WAS

11:25AM 15 GOING ON AT THE TIME?

11:25AM 16 A. YES.

11:25AM 17 Q. AND THE PURPOSE OF THIS WAS TO TRANSMIT INFORMATION

11:25AM 18 ACCURATELY SO THAT PEOPLE COULD TAKE APPROPRIATE ACTION?

11:25AM 19 A. I'M SORRY TO BE A PAIN, BUT IT JUST SEEMS LIKE EVERY

11:25AM 20 EXHIBIT THAT GETS SHOWN, YOU ASK THE SAME LIST OF QUESTIONS.

11:25AM 21 I DON'T KNOW IF THAT'S STANDARD PROCEDURE IN THESE KINDS

11:25AM 22 OF CASES, BUT IT JUST SEEMS REALLY REPETITIVE.

11:25AM 23 THE COURT: SIR, THERE ARE RULES OF EVIDENCE THAT

11:25AM 24 HAVE TO BE FOLLOWED.

11:25AM 25 THE WITNESS: OKAY.

11:25AM 1 THE COURT: SO WE APPRECIATE YOUR PATIENCE.

11:26AM 2 THE WITNESS: OKAY. THANK YOU, YOUR HONOR.

11:26AM 3 BY MR. COOPERSMITH:

11:26AM 4 Q. YEAH. I'M SORRY, I'M NOT TRYING TO WASTE YOUR TIME,

11:26AM 5 DR. ROSENDORFF. BUT AS JUDGE DAVILA SAID, SOMETIMES THIS IS

11:26AM 6 REQUIRED.

11:26AM 7 BUT YOU KNOW WHAT, I'M GOING TO OFFER 7324.

11:26AM 8 MR. BOSTIC: NO OBJECTION.

11:26AM 9 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

11:26AM 10 (DEFENDANT'S EXHIBIT 7324 WAS RECEIVED IN EVIDENCE.)

11:26AM 11 BY MR. COOPERSMITH:

11:26AM 12 Q. OKAY. SO LET'S GO TO PAGE 3 OF THE DOCUMENT, AND THAT'S

11:26AM 13 AN EMAIL FROM DR. SIVARAMAN.

11:26AM 14 DO YOU SEE THAT AT THE BOTTOM?

11:26AM 15 A. YES.

11:26AM 16 Q. AND IT'S AN EMAIL DATED SEPTEMBER 7TH, 2013, TO YOU,

11:26AM 17 DR. YOUNG, COPIED TO ELIZABETH HOLMES AND SUREKHA.

11:26AM 18 DO YOU SEE THAT?

11:26AM 19 A. YES.

11:26AM 20 Q. AND IT SAYS, "PLEASE FIND ATTACHED VALIDATION DATA SUMMARY

11:26AM 21 FILES FOR TPSA, VITAMIN D, AND TSH."

11:26AM 22 DO YOU SEE THAT?

11:26AM 23 A. YES.

11:26AM 24 Q. AND THOSE WERE THREE OF THE ASSAYS THAT THERANOS WAS

11:27AM 25 WORKING ON IN PREPARATION FOR THE WALGREENS LAUNCH?

11:27AM 1 A. YES.

11:27AM 2 Q. IF YOU GO UP THE CHAIN TO THE NEXT EMAIL, THIS IS AN EMAIL

11:27AM 3 FROM DANIEL YOUNG TO YOU AND OTHERS.

11:27AM 4 AND HE WRITES, "THANKS... REVIEWING THE DATA. MAYBE WE

11:27AM 5 CAN MEET AT 3:00 P.M. TOGETHER TO DISCUSS?"

11:27AM 6 RIGHT?

11:27AM 7 A. YES.

11:27AM 8 Q. AND IT HAS A TIMELINE OF WHAT DANIEL YOUNG THINKS SHOULD

11:27AM 9 HAPPEN TO CONTINUE WORKING ON THESE ASSAYS.

11:27AM 10 DO YOU SEE THAT?

11:27AM 11 A. YES.

11:27AM 12 Q. AND THEN ABOVE THAT THERE'S AN EMAIL FROM YOU, AND IT'S

11:27AM 13 FROM YOU TO DANIEL YOUNG, SHARADA SIVARAMAN, AGAIN COPIED TO

11:27AM 14 ELIZABETH HOLMES AND SUREKHA.

11:27AM 15 DO YOU SEE THAT?

11:27AM 16 A. YES.

11:27AM 17 Q. AND MR. BALWANI IS NOT ON THIS EMAIL; RIGHT?

11:27AM 18 A. NO.

11:27AM 19 Q. AND THEN IT SAYS, "SHARADA,

11:27AM 20 "THANKS -- THE DATA LOOKS GREAT."

11:27AM 21 DO YOU SEE THAT?

11:27AM 22 A. YES.

11:27AM 23 Q. AND THAT'S WHAT YOU TOLD DR. SIVARAMAN; RIGHT?

11:28AM 24 A. YES.

11:28AM 25 Q. AND IT SAYS, "THE ACCURACY/BIAS PLOTS COMPARING THE EDISON

11:28AM 1 3.5 WITH PREDICATE (VITAMIN D, TSH) ARE EXCELLENT LIKE THE  
11:28AM 2 CURRENT REFERENCE RANGES COULD EASILY BE ADJUSTED BASED ON THE  
11:28AM 3 REGRESSION FORMULA."

11:28AM 4 DO YOU SEE THAT?

11:28AM 5 A. YES.

11:28AM 6 Q. AND THEN IT GOES ON.

11:28AM 7 DO YOU SEE THAT?

11:28AM 8 A. YES.

11:28AM 9 Q. LET'S PUT THAT ASIDE.

11:28AM 10 NOW, LET'S TALK ABOUT THE LAUNCH ITSELF. IF YOU COULD  
11:28AM 11 REFER -- AND I GUESS WE COULD DO IT ON THE SCREEN -- TO  
11:28AM 12 EXHIBIT 28466.

11:28AM 13 MR. ALLEN, IF WE COULD SHOW DR. ROSENDORFF PAGE 3250 AT  
11:28AM 14 LINE 17.

11:29AM 15 DO YOU HAVE THAT IN FRONT OF YOU?

11:29AM 16 A. YES.

11:29AM 17 Q. OKAY. I JUST WANT TO MAKE SURE THAT WE'RE ALL CLEAR ON  
11:29AM 18 THE TESTIMONY HERE.

11:29AM 19 DO YOU REMEMBER ON WEDNESDAY MR. BOSTIC ASKED YOU A  
11:29AM 20 QUESTION ABOUT WHETHER THERE CAME A TIME IN 2013 WHEN THERANOS  
11:29AM 21 LAUNCHED ITS TESTING SERVICES TO THE GENERAL PUBLIC?

11:29AM 22 DO YOU SEE THAT?

11:29AM 23 A. YES.

11:29AM 24 Q. AND YOU RESPONDED YES, AND THAT IT WAS THE LAUNCH TO THE  
11:29AM 25 GENERAL PUBLIC IN EARLY SEPTEMBER, AROUND SEPTEMBER 9TH?

11:29AM 1 A. YES.

11:29AM 2 Q. OKAY. AND YOUR TESTIMONY ON WEDNESDAY THEN WAS THAT

11:29AM 3 SEPTEMBER 9TH WAS A LAUNCH TO THE, QUOTE, GENERAL PUBLIC?

11:29AM 4 A. YES.

11:29AM 5 Q. OKAY. LET'S TAKE A LOOK AT EXHIBIT 13880.

11:30AM 6 OKAY. DO YOU SEE THAT EXHIBIT 13880 IS AN EMAIL FROM

11:30AM 7 THERANOS HUMAN RESOURCES TO ALL THERANOS EMPLOYEES?

11:30AM 8 DO YOU SEE THAT?

11:30AM 9 A. YES.

11:30AM 10 Q. AND THAT WAS -- YOU WERE AN EMPLOYEE OF THERANOS AT THE

11:30AM 11 TIME; RIGHT?

11:30AM 12 A. CORRECT.

11:30AM 13 Q. AND SO YOU WERE INCLUDED ON EMAIL LISTS OF ALL THERANOS

11:30AM 14 EMPLOYEE AT THE TIME?

11:30AM 15 A. CORRECT.

11:30AM 16 Q. AND THIS EMAIL RELATES TO THE -- IT'S DATED

11:30AM 17 SEPTEMBER 11TH; CORRECT?

11:30AM 18 A. YES.

11:30AM 19 Q. OF 2013?

11:30AM 20 A. YES.

11:30AM 21 Q. AND IT RELATES TO THE INITIAL BLOOD TESTING THAT WAS GOING

11:31AM 22 ON AT THE PALO ALTO WALGREENS; RIGHT?

11:31AM 23 A. YES.

11:31AM 24 Q. OKAY.

11:31AM 25 YOUR HONOR, WE OFFER EXHIBIT 13880.

11:31AM 1 MR. BOSTIC: NO OBJECTION.

11:31AM 2 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

11:31AM 3 (DEFENDANT'S EXHIBIT 13880 WAS RECEIVED IN EVIDENCE.)

11:31AM 4 BY MR. COOPERSMITH:

11:31AM 5 Q. OKAY. LET'S TAKE A LOOK AT IT.

11:31AM 6 IT SAYS, "ALL,

11:31AM 7 "AS MENTIONED IN OUR ALL EMPLOYEE MEETING, WE ARE NOW

11:31AM 8 OFFERING FREE SCREENINGS TO ALL THERANOS EMPLOYEES, FRIENDS AND

11:31AM 9 FAMILY."

11:31AM 10 DO YOU SEE THAT?

11:31AM 11 A. YES.

11:31AM 12 Q. AND IT SAYS, "WE HAVE AN INDEPENDENT PHYSICIAN,

11:31AM 13 DR. ARJALI JAIN" --

11:31AM 14 A. YES.

11:31AM 15 Q. -- "WHO WE ARE COLLABORATING WITH TO MAKE THESE SERVICES

11:31AM 16 AVAILABLE TO YOU. DR. JAIN RECEIVED HER M.D. FROM

11:31AM 17 JOHNS HOPKINS," AND IT GOES ON.

11:31AM 18 DO YOU SEE THAT?

11:31AM 19 A. YES.

11:31AM 20 Q. AND THEN IT GOES ON, "STARTING TODAY, ALL EMPLOYEES,

11:31AM 21 FRIENDS, AND FAMILY WILL BE ABLE TO GO TO OUR WELLNESS CENTER

11:32AM 22 AT DOWNTOWN PALO ALTO WALGREENS LOCATION AND RECEIVE A VARIETY

11:32AM 23 OF TESTS SO EVERYONE GETS TO SEE OUR FIRST STORE."

11:32AM 24 DO YOU SEE THAT?

11:32AM 25 A. YES.

11:32AM 1 Q. AND SO THIS BLOOD TESTING AS INITIALLY CONCEIVED WAS FOR  
11:32AM 2 EMPLOYEES, FRIENDS, AND FAMILY?  
11:32AM 3 A. CORRECT.  
11:32AM 4 Q. AND THEN IT GOES ON TO SAY, "THE FIRST PANEL WE ARE  
11:32AM 5 OFFERING IS A COMPLETE BLOOD COUNT WITH HBA1C TEST."  
11:32AM 6 DO YOU SEE THAT?  
11:32AM 7 A. YES.  
11:32AM 8 Q. AND HBA1C IS A TEST THAT IS DONE TO MONITOR DIABETES?  
11:32AM 9 A. CORRECT.  
11:32AM 10 Q. AND COMPLETE BLOOD COUNT IS A CYTOMETRY TEST?  
11:32AM 11 A. YES.  
11:32AM 12 Q. AND THOSE WERE THE INITIAL TESTS THAT WERE BEING OFFERED  
11:32AM 13 DURING THIS FRIENDS AND FAMILY OPENING.  
11:32AM 14 DO YOU SEE THAT?  
11:32AM 15 A. I DON'T RECALL THAT OTHER THAN READING IT HERE TODAY.  
11:32AM 16 Q. OKAY. AND THEN IT GOES ON, IF YOU GO DOWN THE PAGE A  
11:32AM 17 LITTLE BIT, THERE'S A HEADING, TO GET STARTED, PLEASE FOLLOW  
11:32AM 18 THESE SIMPLE STEPS.  
11:32AM 19 DO YOU SEE THAT?  
11:32AM 20 A. YES.  
11:32AM 21 Q. AND IT SAYS "EMPLOYEES: ALL EMPLOYEES WILL BE  
11:33AM 22 PRE-AUTHORIZED BY DR. JAIN FOR THESE TESTS. PLEASE CLICK ON  
11:33AM 23 THIS LINK TO SCHEDULE A TIME SLOT THAT IS CONVENIENT FOR YOU."  
11:33AM 24 DO YOU SEE THAT?  
11:33AM 25 A. YES.

11:33AM 1 Q. AND THAT'S BECAUSE IN CALIFORNIA, TO GO GET A LAB TEST,  
11:33AM 2 YOU HAVE TO HAVE A DOCTOR PRESCRIBING THAT; RIGHT?  
11:33AM 3 A. CORRECT.  
11:33AM 4 Q. AND DR. JAIN WAS ON THE SCENE IN ORDER TO PRESCRIBE THOSE  
11:33AM 5 TESTS; RIGHT?  
11:33AM 6 A. CORRECT.  
11:33AM 7 Q. RIGHT. SHE WAS MADE AVAILABLE FOR THAT PURPOSE?  
11:33AM 8 A. CORRECT.  
11:33AM 9 Q. AND IF YOU GO TO THE NEXT SECTION THERE, IT SAYS YOUR  
11:33AM 10 FRIENDS AND FAMILY. SO THE FRIENDS AND FAMILY OF THE  
11:33AM 11 EMPLOYEES, THEY'RE INSTRUCTED TO USE THE SAME LINK ABOVE TO  
11:33AM 12 SCHEDULE THEIR TIME SLOT.  
11:33AM 13 DO YOU SEE THAT?  
11:33AM 14 A. YES.  
11:33AM 15 Q. LET'S LOOK AT 20351.  
11:34AM 16 DO YOU HAVE 20351, SIR?  
11:34AM 17 A. NOT YET, SIR.  
11:34AM 18 Q. OKAY. NOW YOU SEE IT?  
11:34AM 19 A. YES.  
11:34AM 20 Q. AND YOU RECOGNIZE THIS AS A FLYER THAT WAS AVAILABLE FOR  
11:34AM 21 THOSE INITIAL TESTS THAT WERE BEING DONE AT THE PALO ALTO  
11:34AM 22 WALGREENS?  
11:34AM 23 A. YES.  
11:34AM 24 Q. AND IT RELATES TO THAT SAME BLOOD TESTING THAT WE WERE  
11:34AM 25 JUST TALKING ABOUT IN THE PREVIOUS EXHIBIT?

11:34AM 1 A. YES.

11:34AM 2 MR. COOPERSMITH: YOUR HONOR, WE OFFER 20351.

11:35AM 3 MR. BOSTIC: NO OBJECTION.

11:35AM 4 THE COURT: IT'S ADMITTED, AND IT MAY BE PUBLISHED.

11:35AM 5 (DEFENDANT'S EXHIBIT 20351 WAS RECEIVED IN EVIDENCE.)

11:35AM 6 BY MR. COOPERSMITH:

11:35AM 7 Q. OKAY. SO LOOKING AT THE FLYER, IT SAYS FREE HEALTH

11:35AM 8 SCREENING OFFERED FROM A TINY FINGERSTICK; RIGHT?

11:35AM 9 A. YES.

11:35AM 10 Q. AND THIS SAYS, "COMPLETE BLOOD COUNT AND DIABETES

11:35AM 11 SCREENING TESTS FOR ALL THERANOS EMPLOYEES, FAMILY AND

11:35AM 12 FRIENDS."

11:35AM 13 DO YOU SEE THAT?

11:35AM 14 A. YES.

11:35AM 15 Q. AND SO THAT WAS WHAT WAS GOING ON ON SEPTEMBER 9TH; RIGHT?

11:35AM 16 A. YES.

11:35AM 17 Q. OKAY. LET'S JUMP AHEAD.

11:35AM 18 DO YOU REMEMBER THAT YOU WERE TALKING ABOUT, DURING YOUR

11:35AM 19 DIRECT EXAMINATION, THAT RIGHT BEFORE THAT SEPTEMBER 9TH

11:35AM 20 INITIAL BLOOD TEST OFFERING AT WALGREENS IN PALO ALTO, THAT YOU

11:35AM 21 NEEDED MORE TIME TO WORK ON THE ASSAYS; RIGHT?

11:35AM 22 A. YES.

11:35AM 23 Q. AND YOU WERE ASKED QUESTIONS ON DIRECT ABOUT THAT SUBJECT

11:36AM 24 AND HOW THERE WASN'T ENOUGH TIME BEFORE THE LAUNCH WAS COMING

11:36AM 25 ON SEPTEMBER 9TH?

11:36AM 1 A. YES.

11:36AM 2 Q. OKAY. WE'VE JUST SEEN WHAT ACTUALLY HAPPENED ON

11:36AM 3 SEPTEMBER 9TH; RIGHT?

11:36AM 4 A. YES.

11:36AM 5 Q. NOW, LET'S GO A FEW MONTHS, OR A COUPLE OF MONTHS AHEAD,

11:36AM 6 OR ONE MONTH AHEAD AND LOOK AT EXHIBIT 12464.

11:36AM 7 OKAY. DO YOU SEE THIS IS AN EMAIL STRING AMONG YOU AND

11:36AM 8 MR. BALWANI?

11:36AM 9 A. YES.

11:36AM 10 Q. AND IT'S DATED NOVEMBER 7TH AND NOVEMBER 8TH, 2013?

11:37AM 11 A. YES.

11:37AM 12 Q. AND IT RELATES TO, AGAIN, THE LAUNCH OF WALGREENS?

11:37AM 13 A. IT LOOKS LIKE THIS WAS AFTER THE LAUNCH.

11:37AM 14 Q. WELL, IT WAS NOVEMBER 8TH?

11:37AM 15 A. YES.

11:37AM 16 Q. AND SO IT RELATES TO THE WALGREENS BLOOD TESTING?

11:37AM 17 A. YES.

11:37AM 18 MR. COOPERSMITH: OKAY, YOUR HONOR, WE OFFER

11:37AM 19 EXHIBIT 12464.

11:37AM 20 MR. BOSTIC: NO OBJECTION.

11:37AM 21 THE COURT: IT'S ADMITTED, AND IT MAY BE PUBLISHED.

11:37AM 22 (DEFENDANT'S EXHIBIT 12464 WAS RECEIVED IN EVIDENCE.)

11:37AM 23 BY MR. COOPERSMITH:

11:37AM 24 Q. OKAY. LET'S LOOK AT THE BOTTOM EMAIL, FIRST IN TIME.

11:37AM 25 AND MR. BALWANI WRITES ON NOVEMBER 7TH, 2013, "ADAM,

11:37AM 1 "WE WOULD LIKE TO OPEN OUR 300 UNIVERSITY AVENUE STORE TO  
11:37AM 2 PUBLIC THIS COMING MONDAY."

11:37AM 3 DO YOU SEE THAT?

11:37AM 4 A. YES.

11:37AM 5 Q. "WE FEEL CONFIDENT THAT WE CAN HANDLE 30 SAMPLES PER DAY  
11:37AM 6 FROM THIS LOCATION AT THIS POINT. AND IT HAS BEEN 2 MONTHS  
11:37AM 7 SINCE WE HAVE BEEN OUT IN WAG. IT'S TIME TO GO LIVE."

11:38AM 8 DO YOU SEE THAT?

11:38AM 9 A. YES.

11:38AM 10 Q. AND IT SAYS, WE WILL BE ALSO OPENING OUR FIRST PHOENIX  
11:38AM 11 LOCATION NEXT WEEK.

11:38AM 12 DO YOU SEE THAT?

11:38AM 13 A. YES.

11:38AM 14 Q. AND THEN IF YOU GO TO THE NEXT PAGE, MR. BALWANI WRITES,  
11:38AM 15 "THE KEY IS TO HAVE PERFECT DISCIPLINE AND SOP'S," STANDARD  
11:38AM 16 OPERATING PROCEDURES, "IN PLACE TO MAKE SURE WE HAVE A PLAN FOR  
11:38AM 17 EVERYTHING AND EVERYONE IN THE CHAIN KNOWS WHAT NEEDS TO BE  
11:38AM 18 DONE. WE WILL WORK ON THIS FROM NOW THRU NEXT 5 DAYS AND I  
11:38AM 19 KNOW WE WILL GET THIS DONE."

11:38AM 20 DO YOU SEE THAT?

11:38AM 21 A. YES.

11:38AM 22 Q. AND THEN HE WRITES, "I WOULD LIKE TO ASK AT THIS TIME IF  
11:38AM 23 YOU HAVE A REASON TO THINK WE NEED MORE TIME OR TEST OUT  
11:38AM 24 SOMETHING THAT WE HAVEN'T THOUGHT ABOUT. WE WILL BE PICKING UP  
11:38AM 25 SAMPLES EVERY HOUR OR SO DURING NOVEMBER FROM THE

11:38AM 1 300 UNIVERSITY AVENUE LOCATION SO I THINK AT A POINT WE WILL  
11:38AM 2 NEVER HAVE TOO MANY SAMPLES TO DEAL WITH AT ONE POINT."

11:38AM 3 DO YOU SEE THAT?

11:38AM 4 A. YES.

11:38AM 5 Q. SO MR. BALWANI IS ASKING YOU TO PROVIDE ANY REASON IF YOU  
11:38AM 6 NEED MORE TIME OR ANYTHING ELSE THAT YOU THINK NEEDS TO BE  
11:38AM 7 DONE; RIGHT?

11:38AM 8 A. YES.

11:38AM 9 Q. AND THEN YOU RESPONDED IN THE EMAIL ON THE FIRST PAGE;  
11:39AM 10 CORRECT?

11:39AM 11 A. YES.

11:39AM 12 Q. AND YOU WROTE, "SUNNY,  
11:39AM 13 "THIS IS VERY EXCITING THAT WE ARE BROADENING OUR TESTING  
11:39AM 14 TO A WIDER BASE."

11:39AM 15 DO YOU SEE THAT?

11:39AM 16 A. YES.

11:39AM 17 Q. AND THEN YOU SAY, "THERE ARE A FEW ISSUES THAT NEED TO BE  
11:39AM 18 ADDRESSED."

11:39AM 19 RIGHT?

11:39AM 20 A. YES.

11:39AM 21 Q. AND THEN YOU HAVE OPERATIONAL ISSUES; RIGHT?

11:39AM 22 A. YES.

11:39AM 23 Q. AND THEN YOU HAVE MEDICAL/SCIENTIFIC ISSUES; RIGHT?

11:39AM 24 A. YES.

11:39AM 25 Q. AND THE MEDICAL/SCIENTIFIC ISSUES ARE WHAT YOU ARE

11:39AM 1 POINTING OUT THAT YOU THINK WOULD GO TO THE ABILITY OF THE  
11:39AM 2 ASSAYS TO FUNCTION PROPERLY; RIGHT?  
11:39AM 3 A. YES.  
11:39AM 4 Q. AND IN THIS CASE YOU'RE IDENTIFYING AS AN ISSUE  
11:39AM 5 SENSITIVITY OF VITAMIN D, TSH, AND POSSIBLY CTNI.  
11:39AM 6 DO YOU SEE THAT?  
11:39AM 7 A. SO IT'S NOT JUST THE MEDICAL/SCIENTIFIC ISSUES THAT ARE  
11:39AM 8 IMPORTANT FOR GOOD LABORATORY PRACTICE AND ACCURATE RESULTS.  
11:39AM 9 IT'S ALSO THE CHAIN OF COMMAND.  
11:39AM 10 Q. I'M GOING TO INTERRUPT YOU BECAUSE I JUST WANT MY QUESTION  
11:39AM 11 ANSWERED, OKAY?  
11:39AM 12 A. YEAH.  
11:39AM 13 Q. SO IN THIS EMAIL YOU WERE JUST POINTING OUT THE  
11:39AM 14 MEDICAL/SCIENTIFIC ISSUES THAT I JUST READ, CORRECT, IN THIS  
11:40AM 15 EMAIL?  
11:40AM 16 A. NO.  
11:40AM 17 Q. WELL, THAT'S WHAT YOU'RE SAYING IN THIS EMAIL; RIGHT?  
11:40AM 18 A. OPERATIONAL -- THERE'S OPERATIONAL AT THE TOP.  
11:40AM 19 Q. CORRECT. YOU'RE POINTING OUT SOME OPERATIONAL ISSUES;  
11:40AM 20 CORRECT?  
11:40AM 21 A. UH-HUH, UH-HUH.  
11:40AM 22 Q. AND THEN YOU'RE ALSO POINTING OUT SOME MEDICAL AND  
11:40AM 23 SCIENTIFIC ISSUES?  
11:40AM 24 A. CORRECT.  
11:40AM 25 Q. AND THEN YOU SPECIFICALLY WRITE WHAT YOUR MEDICAL AND

11:40AM 1 SCIENTIFIC ISSUES WERE AT THE TIME; RIGHT?

11:40AM 2 A. YES.

11:40AM 3 Q. AND THAT WAS IN RESPONSE TO MR. BALWANI'S EMAIL WHERE HE

11:40AM 4 ASKED YOU FOR ANYTHING THAT YOU HAD TO SAY AT THAT POINT;

11:40AM 5 RIGHT?

11:40AM 6 A. YES.

11:40AM 7 Q. OKAY. AND THEN YOU POINTED OUT SPECIFICALLY SENSITIVITY

11:40AM 8 ISSUES SURROUNDING VITAMIN D, TSH, AND POSSIBLY CTNI; RIGHT?

11:40AM 9 A. YES.

11:40AM 10 Q. AND THEN YOU GO ON TO EXPLAIN WHAT YOUR CONCERN WAS;

11:40AM 11 RIGHT?

11:40AM 12 A. YES.

11:40AM 13 Q. OKAY. SO LET'S TALK ABOUT THAT.

11:40AM 14 FIRST OF ALL, ON THE ISSUE OF VITAMIN D, YOU HAD ACTUALLY

11:41AM 15 SIGNED THAT VALIDATION REPORT ON SEPTEMBER 30TH, 2013; CORRECT?

11:41AM 16 A. I DO NOT RECALL.

11:41AM 17 Q. OKAY. LET'S JUST TAKE A QUICK LOOK AT EXHIBIT 9412 THAT

11:41AM 18 IS IN THAT VALIDATION REPORT BINDER THAT I HANDED YOU, OR MAYBE

11:41AM 19 YOU CAN SEE IT ON THE SCREEN AND YOU CAN SEE THE DATE

11:41AM 20 SEPTEMBER 30TH, 2013?

11:41AM 21 A. YES.

11:41AM 22 Q. AND THAT'S THE VITAMIN D VALIDATION REPORT; CORRECT?

11:41AM 23 A. YES.

11:41AM 24 Q. AND THEN IF YOU GO TO EXHIBIT 20424, WHICH IS NOT YET IN

11:41AM 25 EVIDENCE.

11:41AM 1 DO YOU SEE 20424?

11:41AM 2 A. YES.

11:41AM 3 Q. AND THIS IS DR. SIVARAMAN SENDING YOU AN EMAIL ON

11:41AM 4 NOVEMBER 20TH, 2013?

11:41AM 5 A. YES.

11:41AM 6 Q. TO YOU AND TO DR. YOUNG?

11:41AM 7 A. YES.

11:41AM 8 Q. AND ALSO A COPY TO RAN HU, H-U?

11:41AM 9 A. YES.

11:41AM 10 Q. OKAY. AND THEN THERE'S CERTAIN ATTACHMENTS.

11:42AM 11 DO YOU SEE THAT?

11:42AM 12 A. YES.

11:42AM 13 Q. AND THIS RELATES TO VITAMIN D AND TSH; RIGHT?

11:42AM 14 A. YES.

11:42AM 15 Q. OKAY.

11:42AM 16 YOUR HONOR, WE OFFER EXHIBIT --

11:42AM 17 THE COURT: 20424.

11:42AM 18 MR. COOPERSMITH: -- 20424, YES, THANK YOU.

11:42AM 19 MR. BOSTIC: NO OBJECTION.

11:42AM 20 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

11:42AM 21 (DEFENDANT'S EXHIBIT 20424 WAS RECEIVED IN EVIDENCE.)

11:42AM 22 BY MR. COOPERSMITH:

11:42AM 23 Q. OKAY, LOOKING AT THE EMAIL, IT SAYS DR. SIVARAMAN IS

11:42AM 24 SENDING YOU THE UPDATED REVISED VITAMIN D AND TSH REPORTS WITH

11:42AM 25 THE REPEAT OF THE ANALYTICAL SENSITIVITY EXPERIMENTS, THE DATA

11:42AM 1 OF WHICH WAS SHARED WITH YOU IN THE LAST MEETING.

11:42AM 2 DO YOU SEE THAT?

11:42AM 3 A. YES.

11:42AM 4 Q. BECAUSE SHE WAS RESPONDING TO THE ISSUES THAT YOU WERE

11:42AM 5 RAISING ABOUT SENSITIVITY ON THESE TWO ASSAYS; CORRECT?

11:42AM 6 A. YES.

11:42AM 7 Q. AND THEN IT GOES ON TO SAY, "PLEASE LET ME KNOW HOW YOU

11:42AM 8 WOULD LIKE THE REVISIONS TO BE INCORPORATED. DO WE KEEP OR

11:42AM 9 REMOVE THE ORIGINAL SECTION AND ALSO IF YOU NEED TO SIGN THESE

11:42AM 10 TWO REPORTS AGAIN."

11:42AM 11 DO YOU SEE THAT?

11:43AM 12 A. YES.

11:43AM 13 Q. AND SO AFTER YOU RAISED THESE CONCERNS ABOUT THESE

11:43AM 14 PARTICULAR ASSAYS, ADDITIONAL WORK WAS DONE IN THE RESEARCH AND

11:43AM 15 DEVELOPMENT LAB TO SOLVE FOR THE SENSITIVITY ISSUES; RIGHT?

11:43AM 16 A. THAT'S WHAT IT LOOKS LIKE, YEAH, YEAH.

11:43AM 17 Q. OKAY. AND MR. BALWANI WAS NOT ON THESE EMAILS; RIGHT?

11:43AM 18 A. NO, HE'S NOT.

11:43AM 19 Q. AND IF YOU GO TO THE NEXT EXHIBIT, 20423.

11:43AM 20 DO YOU SEE THAT YET?

11:43AM 21 OKAY. DO YOU SEE IT ON YOUR SCREEN?

11:43AM 22 A. YES.

11:43AM 23 Q. AND DO YOU SEE AT THE BOTTOM THERE'S THE SAME EMAIL THAT

11:43AM 24 WE JUST LOOKED AT FROM DR. SIVARAMAN?

11:43AM 25 A. YES.

11:43AM 1 Q. AND THEN THIS IS A DIFFERENT EMAIL CHAIN, SO IT HAS A  
11:43AM 2 RESPONSE FROM YOU; CORRECT?  
11:43AM 3 A. YES.  
11:43AM 4 Q. AND THEN YOU WERE JUST RESPONDING TO DR. SIVARAMAN AFTER  
11:43AM 5 SHE SENT YOU THOSE REVISED REPORTS THAT DEALT WITH SENSITIVITY?  
11:44AM 6 A. YES.  
11:44AM 7 Q. OKAY.  
11:44AM 8 YOUR HONOR, WE OFFER 20423.  
11:44AM 9 MR. BOSTIC: NO OBJECTION.  
11:44AM 10 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.  
11:44AM 11 (DEFENDANT'S EXHIBIT 20423 WAS RECEIVED IN EVIDENCE.)  
11:44AM 12 BY MR. COOPERSMITH:  
11:44AM 13 Q. OKAY. NOW THAT WE'RE ALL SEEING IT, YOU SEE IT'S FROM YOU  
11:44AM 14 TO DR. SIVARAMAN AND THE SUBJECT IS REVISED TSH AND VITAMIN D  
11:44AM 15 REPORTS?  
11:44AM 16 A. YES.  
11:44AM 17 Q. AND AGAIN, MR. BALWANI IS NOT ON THIS EMAIL; RIGHT?  
11:44AM 18 A. YES.  
11:44AM 19 Q. IT SAYS, "HI, SHARADA,  
11:44AM 20 "THE NEW VITAMIN D REPORT LOOKS GOOD -- 2 MINOR POINTS."  
11:44AM 21 DO YOU SEE THAT?  
11:44AM 22 A. YES.  
11:44AM 23 Q. AND THEN YOU GO ON AND EXPLAIN SOMETHING THAT YOU WOULD  
11:44AM 24 LIKE DELETED IN CONNECTION WITH THE REFERENCE RANGE; RIGHT?  
11:44AM 25 A. YES.

11:44AM 1 Q. YOU CAN TAKE THAT DOWN, MR. ALLEN.

11:44AM 2 NOW, VITAMIN D IN PARTICULAR, AT TIME IT'S A DIFFICULT

11:44AM 3 ASSAY; RIGHT?

11:45AM 4 A. I'M NOT SURE.

11:45AM 5 Q. OKAY. LET'S TAKE A LOOK AT AN EXHIBIT ALREADY IN

11:45AM 6 EVIDENCE, 20046.

11:45AM 7 AND DO YOU SEE THIS IS AN EMAIL STRING WITH A NUMBER OF

11:45AM 8 PEOPLE, INCLUDING YOURSELF?

11:45AM 9 BUT THE ONE I WANT TO FOCUS ON WAS THE EMAIL FROM

11:45AM 10 DR. PANDORI TO MR. BALWANI, MR. GEE, YOURSELF, AND

11:45AM 11 DANIEL YOUNG, WITH COPIES TO OTHERS.

11:45AM 12 DO YOU SEE THAT?

11:45AM 13 A. YES.

11:45AM 14 Q. AND THEN DR. PANDORI WRITES, "OK.

11:45AM 15 LANGLY, NOTE.

11:45AM 16 "ALSO, ALL,

11:45AM 17 "ATTACHED IS AN INTERESTING PAPER I'VE FOUND ON THE TOPIC

11:45AM 18 OF VARIABILITY OF VITAMIN D ASSAYS ON VARIOUS

11:45AM 19 METHODS/EQUIPMENT. IT MAY BE USEFUL IN REGARDS TO OUR EFFORT

11:46AM 20 TO ESTABLISH FAIR RANGES OF ACCEPTABILITY FOR AAP THIS ANALYTE,

11:46AM 21 WHICH SEEMS NOTORIOUS FOR VARIABILITY ON EVEN FDA APPROVED

11:46AM 22 TESTS."

11:46AM 23 RIGHT?

11:46AM 24 A. YES.

11:46AM 25 Q. AND YOU AGREE WITH DR. PANDORI THAT VITAMIN D IS NOTORIOUS

11:46AM 1 FOR VARIABILITY?

11:46AM 2 A. WELL, I DON'T WANT TO GET TOO TECHNICAL, BUT THERE'S 25

11:46AM 3 OH, OR 25 HYDROXY VITAMIN D, THERE'S 1,25 HYDROXY VITAMIN D.

11:46AM 4 THE ASSAYS TO DETECT TOTAL VITAMIN D, MY SENSE IS THAT

11:46AM 5 THEY'RE BETTER THAN THE ONES THAT CLAIM TO DETECT THE 25

11:46AM 6 HYDROXY VITAMIN D.

11:46AM 7 I MEAN, I'M JUST SAYING THERE'S MORE NUANCE TO THIS THAN

11:46AM 8 WHAT YOU'RE SAYING.

11:46AM 9 Q. I'M SURE THAT'S THE CASE, BUT I'M SIMPLY ASKING HERE

11:46AM 10 WHETHER YOU AGREE WITH DR. PANDORI IN TERMS OF WHAT HE'S SAYING

11:47AM 11 IN THIS EMAIL?

11:47AM 12 A. I'M NOT SURE WHAT HE'S SAYING, BECAUSE HE'S JUST SAYING

11:47AM 13 VITAMIN D, YOU KNOW, PERIOD.

11:47AM 14 Q. OKAY. DID YOU READ THE PAPER THAT HE ATTACHED?

11:47AM 15 A. I DON'T RECALL.

11:47AM 16 Q. OKAY. AND WAS THAT YOUR USUAL PRACTICE? IF DR. PANDORI

11:47AM 17 OR SOMEONE ELSE IN THE SCIENTIFIC TEAM SENT THE PAPER, WOULD

11:47AM 18 YOU TRY TO READ IT?

11:47AM 19 A. I WOULD TRY TO, YES.

11:47AM 20 Q. OKAY. LET'S TAKE A LOOK AT EXHIBIT 20303.

11:47AM 21 OKAY. DO YOU HAVE THAT ON YOUR SCREEN?

11:47AM 22 A. YES.

11:47AM 23 Q. AND IS THIS AN EMAIL STRING BETWEEN YOU AND MR. BALWANI

11:47AM 24 DATED NOVEMBER 11TH, 2013?

11:47AM 25 A. YES.

11:47AM 1 Q. AND IT RELATES TO PHOENIX?

11:47AM 2 A. YES.

11:47AM 3 Q. AND YOU UNDERSTOOD THAT THERANOS WAS PLANNING TO OPEN

11:48AM 4 STORES IN PHOENIX?

11:48AM 5 A. YES.

11:48AM 6 MR. COOPERSMITH: AND I OFFER 20303.

11:48AM 7 MR. BOSTIC: NO OBJECTION.

11:48AM 8 THE COURT: IT'S ADMITTED, AND IT MAY BE PUBLISHED.

11:48AM 9 (DEFENDANT'S EXHIBIT 20303 WAS RECEIVED IN EVIDENCE.)

11:48AM 10 BY MR. COOPERSMITH:

11:48AM 11 Q. DR. ROSENDORFF, DO YOU SEE IN THE BOTTOM EMAIL MR. BALWANI

11:48AM 12 IS WRITING TO YOU WITH A SUBJECT PHX, WHICH IS PHOENIX?

11:48AM 13 A. YES.

11:48AM 14 Q. AND THEN HE SAYS "ADAM,

11:48AM 15 "PLEASE NOTE THAT SINCE THE LOCAL MARKET NOW ALREADY KNOWS

11:48AM 16 THAT WE ARE IN ARIZONA, WE ARE ANNOUNCING PRESENCE IN 2 STORES

11:48AM 17 IN PHOENIX TOMORROW."

11:48AM 18 DO YOU SEE THAT?

11:48AM 19 A. YES.

11:48AM 20 Q. "WE WILL STILL CONTINUE TO MODULATE THE NUMBER OF SAMPLES

11:48AM 21 FROM THERE SO THAT THE TOTAL NUMBER OF SAMPLES THIS MONTH STILL

11:48AM 22 STAYS BELOW 100 PER DAY."

11:48AM 23 DO YOU SEE THAT?

11:48AM 24 A. YES.

11:48AM 25 Q. AND THAT WAS THAT OPERATIONAL ISSUE THAT WE DISCUSSED

11:48AM 1 EARLIER WHERE IT WOULD BE EASIER TO DEAL WITH A LOWER NUMBER OF  
11:48AM 2 SAMPLES?

11:48AM 3 A. YOU STILL HAVE TO -- WELL, I CAN'T ANSWER THAT YES OR NO.

11:49AM 4 Q. OKAY. AND THEN YOUR RESPONSE TO MR. BALWANI'S MESSAGE IS

11:49AM 5 "EXCELLENT"?

11:49AM 6 A. YES.

11:49AM 7 Q. "THANK YOU."

11:49AM 8 A. YES.

11:49AM 9 Q. NOTHING ELSE?

11:49AM 10 A. YES.

11:49AM 11 Q. DR. ROSENDORFF, DO YOU REMEMBER ON DIRECT WHEN YOU WERE

11:49AM 12 TALKING TO MR. BOSTIC YOU DISCUSSED AN INSPECTION THAT HAD

11:49AM 13 OCCURRED IN SEPTEMBER OF 2013?

11:49AM 14 A. YES.

11:49AM 15 Q. AND I THINK ON TUESDAY WHEN I STARTED ASKING YOU

11:49AM 16 QUESTIONS, WE SAW THAT THE INSPECTOR WAS AN EILEEN NORKIN.

11:49AM 17 DO YOU REMEMBER THAT?

11:49AM 18 A. FROM YESTERDAY, YES.

11:49AM 19 Q. OR I THINK IT MIGHT HAVE BEEN WEDNESDAY.

11:49AM 20 A. OH, I'M SORRY. CORRECT. I'M SORRY, YEAH.

11:49AM 21 Q. OKAY. AND, IN FACT, THIS WAS A ROUTINE INSPECTION THAT

11:50AM 22 WAS PLANNED; IS THAT RIGHT?

11:50AM 23 A. CORRECT.

11:50AM 24 Q. AND THIS INSPECTOR CAME AND LOOKED AT THE THERANOS LAB;

11:50AM 25 RIGHT?

11:50AM 1 A. CORRECT.

11:50AM 2 Q. AND I THINK THAT, JUST TO MAKE SURE WE'RE CLEAR, HER JOB

11:50AM 3 AS YOU UNDERSTOOD IT WAS TO INSPECT THE THERANOS CLINICAL LAB;

11:50AM 4 RIGHT?

11:50AM 5 A. CORRECT.

11:50AM 6 Q. IT WAS NOT TO INSPECT THE RESEARCH AND DEVELOPMENT LAB?

11:50AM 7 A. CORRECT.

11:50AM 8 Q. AND YOU SAID ON WEDNESDAY THAT MR. BALWANI HAD -- HE

11:50AM 9 DIDN'T WANT PEOPLE TO LOOK AT THE RESEARCH AND DEVELOPMENT LAB;

11:50AM 10 RIGHT?

11:50AM 11 A. CORRECT.

11:50AM 12 Q. AND THERE WAS NO REASON THAT MS. NORKIN NEEDED TO INSPECT

11:50AM 13 THAT LAB; RIGHT?

11:50AM 14 A. NO.

11:50AM 15 Q. BECAUSE HER ONLY JOB WAS TO MAKE SURE THAT THAT LAB WAS

11:50AM 16 OPERATING PROPERLY ON THE CLINICAL LAB SIDE; RIGHT?

11:50AM 17 A. CORRECT.

11:50AM 18 Q. AND THE RESEARCH AND DEVELOPMENT LAB IS WHERE THERANOS IS

11:50AM 19 WORKING ON NEW ASSAYS AND NEW THINGS; RIGHT?

11:50AM 20 A. CORRECT.

11:50AM 21 Q. AND THERE WAS NO -- MS. NORKIN NEVER REQUESTED TO INSPECT

11:51AM 22 THE RESEARCH AND DEVELOPMENT LAB; RIGHT?

11:51AM 23 A. I WAS NEVER WITH HER -- I WASN'T WITH HER THE WHOLE TIME

11:51AM 24 SHE WAS THERE THAT DAY, SO I COULDN'T REALLY SAY.

11:51AM 25 Q. AND AS FAR AS THE TIME THAT YOU SPENT WITH HER, SHE DIDN'T

11:51AM 1 ASK YOU ABOUT THAT?

11:51AM 2 A. NO.

11:51AM 3 Q. AND THEN YOU ALSO SAID IN YOUR DIRECT EXAMINATION THAT YOU

11:51AM 4 SHOWED HER VALIDATION REPORTS.

11:51AM 5 A. YES.

11:51AM 6 Q. AND THE VALIDATION REPORTS WERE FOR THE EDISON DEVICE?

11:51AM 7 A. I BELIEVE SO, YES.

11:51AM 8 Q. AND ALSO FOR THE MODIFIED PREDICATE DEVICE?

11:51AM 9 A. YES.

11:51AM 10 Q. AND SO BECAUSE YOU SHOWED THOSE TO HER, YOU WERE INFORMING

11:51AM 11 HER THAT THERANOS WAS RUNNING THOSE PIECES OF EQUIPMENT IN THE

11:51AM 12 LAB; RIGHT?

11:51AM 13 A. I WAS INFORMING HER OF THE LDT'S THAT WE WERE RUNNING.

11:51AM 14 Q. RIGHT. AND THE LDT'S WERE THE EDISON AND THE MODIFIED

11:51AM 15 PREDICATE; RIGHT?

11:51AM 16 A. CORRECT.

11:51AM 17 Q. AND SO AFTER THAT, IF SHE HAD REQUESTED TO SEE THE ACTUAL

11:51AM 18 DEVICES IN THE NORMANDY LAB, YOU WOULD HAVE ALLOWED HER TO DO

11:51AM 19 THAT; RIGHT?

11:51AM 20 A. YES.

11:51AM 21 Q. YOU WOULDN'T HAVE REFUSED?

11:52AM 22 A. NO, I WOULD NOT.

11:52AM 23 Q. YOU WEREN'T TRYING TO HIDE ANYTHING FROM MS. NORKIN, WERE

11:52AM 24 YOU?

11:52AM 25 A. I WAS NOT.

11:52AM 1 Q. AND, IN FACT, PART OF NOT HIDING ANYTHING FROM HER WAS  
11:52AM 2 SHOWING HER THESE VALIDATION REPORTS?  
11:52AM 3 A. CORRECT.  
11:52AM 4 Q. AND SO IF SHE HAD ANY OTHER QUESTIONS ABOUT THE OPERATION  
11:52AM 5 OF ANY DEVICE THAT WAS RUNNING BLOOD TESTS IN THE CLINICAL LAB,  
11:52AM 6 YOU WOULD HAVE HAD TO PROVIDE THAT INFORMATION?  
11:52AM 7 A. YES.  
11:52AM 8 Q. AND YOU WOULD HAVE DONE THAT?  
11:52AM 9 A. YES.  
11:52AM 10 Q. OKAY.  
11:52AM 11 YOUR HONOR, I'M GOING TO GO TO ANOTHER TOPIC. I KNOW IT'S  
11:52AM 12 A LITTLE BEFORE 12:00. WOULD THIS BE A GOOD TIME FOR A BREAK?  
11:52AM 13 THE COURT: YOU'RE NOT GOING TO FINISH IT IN SEVEN  
11:52AM 14 MINUTES?  
11:52AM 15 MR. COOPERSMITH: NO, YOUR HONOR.  
11:52AM 16 THE COURT: ALL RIGHT.  
11:52AM 17 LET'S TAKE OUR LUNCH BREAK NOW, LADIES AND GENTLEMEN.  
11:52AM 18 LET'S TAKE 30 MINUTES, AND THEN WE'LL COME BACK.  
11:52AM 19 MR. COOPERSMITH: THANK YOU, YOUR HONOR.  
11:52AM 20 THE COURT: YOU'RE WELCOME.  
11:52AM 21 (LUNCH RECESS TAKEN AT 11:52 A.M.)  
22  
23  
24  
25

11:53AM	1	<b>AFTERNOON SESSION</b>
12:35PM	2	(JURY IN AT 12:35 P.M.)
12:35PM	3	THE COURT: THANK YOU. WE ARE BACK ON THE RECORD.
12:35PM	4	ALL PARTIES PREVIOUSLY PRESENT ARE PRESENT AGAIN.
12:35PM	5	DR. ROSENDORFF IS STILL ON THE STAND.
12:35PM	6	I'LL REMIND YOU, DR. ROSENDORFF, YOU'RE STILL UNDER OATH.
12:35PM	7	I JUST WANTED TO REMIND YOU, FOLKS, WE ARE GOING TO BREAK
12:35PM	8	TODAY AT 2:45, 2:45 TODAY.
12:35PM	9	THANK YOU.
12:35PM	10	MR. COOPERSMITH.
12:35PM	11	MR. COOPERSMITH: THANK YOU, YOUR HONOR.
12:35PM	12	Q. GOOD AFTERNOON, DR. ROSENDORFF.
12:35PM	13	A. GOOD AFTERNOON.
12:36PM	14	Q. SO LET'S SWITCH TO A DIFFERENT SUBJECT, AND I WANT TO TALK
12:36PM	15	TO YOU ABOUT THE LABORATORY INFORMATION SYSTEM AT THERANOS.
12:36PM	16	OKAY?
12:36PM	17	A. UH-HUH.
12:36PM	18	Q. AND YOU REMEMBER THERE WAS -- I THINK WE MENTIONED IT
12:36PM	19	EARLIER, THERE WAS A LABORATORY INFORMATION SYSTEM?
12:36PM	20	A. YES.
12:36PM	21	Q. AND IT NEEDED TO BE UP AND RUNNING BEFORE THE WALGREENS
12:36PM	22	TESTING BEGAN?
12:36PM	23	A. YES.
12:36PM	24	Q. AND THE LABORATORY INFORMATION SYSTEM WAS A DATABASE
12:36PM	25	ESSENTIALLY; CORRECT?

12:36PM 1 A. YES.

12:36PM 2 Q. AND IN THE LABORATORY INFORMATION SYSTEM, LIKE, ALL OF THE

12:36PM 3 PATIENT RESULTS WERE HOUSED; RIGHT?

12:36PM 4 A. CORRECT.

12:36PM 5 Q. SO IF YOU WANTED TO LOOK UP ANY PATIENT RESULT, YOU COULD

12:36PM 6 DO THAT FROM LIS?

12:36PM 7 A. CORRECT, CORRECT.

12:36PM 8 Q. AND IF YOU WANTED TO KNOW ALL OF THE, FOR EXAMPLE, HCG

12:36PM 9 TESTS DONE IN A CERTAIN MONTH, YOU COULD DO THAT WITH LIS;

12:36PM 10 RIGHT?

12:36PM 11 A. CORRECT.

12:36PM 12 Q. AND I THINK YOU MENTIONED IN THE DIRECT EXAMINATION ON

12:36PM 13 WEDNESDAY THAT YOU WOULD, IN CONNECTION WITH INQUIRIES FROM

12:37PM 14 PHYSICIANS, YOU WOULD DO A TECHNICAL REVIEW TO SEE IF THINGS

12:37PM 15 HAD GONE WRONG AND TRY TO UNDERSTAND WHAT HAPPENED; RIGHT?

12:37PM 16 A. YES.

12:37PM 17 Q. NOW, WHEN AN ISSUE AROSE, YOU YOURSELF OR SOMEBODY ELSE

12:37PM 18 WOULD PULL INFORMATION FROM LIS TO PROVIDE DATA TO ADDRESS THE

12:37PM 19 SITUATION; CORRECT?

12:37PM 20 A. YES.

12:37PM 21 Q. AND THAT THE TYPE OF DATA COULD INCLUDE THE SPECIFIC ASSAY

12:37PM 22 THAT WAS USED?

12:37PM 23 A. YES.

12:37PM 24 Q. AND THE MACHINE THAT IT WAS RUN ON?

12:37PM 25 A. YES.

12:37PM 1 Q. AND THE REFERENCE RANGE?

12:37PM 2 A. CAN WE REWIND A LITTLE BIT?

12:37PM 3 SO I DON'T THINK THAT THE SPECIFIC MACHINES WERE RECORDED

12:37PM 4 IN THE LIS AT THERANOS. THEY'RE SUPPOSED TO BE. I MEAN,

12:37PM 5 THAT'S GOOD LIS THAT YOU KNOW EXACTLY WHAT INSTRUMENT SOMETHING

12:37PM 6 WAS RUN ON, YEAH.

12:37PM 7 Q. OKAY. IF I COULD REFER YOU -- AND I'VE HANDED YOU SOME

12:37PM 8 BINDERS, PROBABLY ON WEDNESDAY, THAT HAVE SOME PRIOR TESTIMONY

12:37PM 9 IN THEM.

12:38PM 10 A. UH-HUH.

12:38PM 11 Q. AND YOU SHOULD HAVE THEM. I'M SORRY TO REFER YOU BACK TO

12:38PM 12 BINDERS, BUT IT'S -- IF YOU COULD FIND EXHIBIT 28400.

12:38PM 13 A. OKAY. DO YOU KNOW WHICH BINDER IT IS IN?

12:38PM 14 Q. YES. IT WOULD BE IN VOLUME 4. IT SHOULD BE LABELLED.

12:38PM 15 A. OKAY. GOT IT.

12:38PM 16 Q. OKAY. AND IF YOU COULD TURN TO PAGE 2090?

12:38PM 17 A. I'M SORRY, PAGE 20 -- OH, YOU'RE REFERENCING THE TOP RIGHT

12:38PM 18 HAND?

12:38PM 19 Q. YES, PLEASE. THANK YOU. THANK YOU.

12:38PM 20 A. OKAY. GOT IT.

12:39PM 21 Q. OKAY. AND IF YOU TAKE A LOOK AT LINE 9?

12:39PM 22 A. YES.

12:39PM 23 Q. AND LINE 10?

12:39PM 24 A. YES, I'M SEEING IT.

12:39PM 25 Q. OKAY. DOES THAT REFRESH YOUR MEMORY THAT THE --

12:39PM 1 A. WELL, I MEAN, TO CLARIFY --

12:39PM 2 Q. WELL, CAN I JUST FINISH MY QUESTION?

12:39PM 3 A. I'M SORRY. I INTERRUPTED YOU.

12:39PM 4 Q. THAT'S OKAY. THANK YOU.

12:39PM 5 DOES THAT REFRESH YOUR MEMORY THAT THE LIS COULD HAVE

12:39PM 6 INCLUDED THE MACHINE THAT IT WAS RUN ON?

12:39PM 7 A. THE LIS WOULD TELL YOU IF IT WAS RUN ON AN EDISON VERSUS

12:39PM 8 AN IMMULITE VERSUS AN -- IT WOULDN'T TELL YOU THE ACTUAL

12:39PM 9 MACHINE. SO THE SERIAL NUMBER OF -- FOR INSTANCE, YOU KNOW,

12:39PM 10 THERE ARE MULTIPLE EDISONS, SO IT COULDN'T TELL YOU WHICH

12:39PM 11 PARTICULAR EDISON WAS BEING USED.

12:39PM 12 Q. OKAY. YOU DON'T REMEMBER THAT THAT WAS THE CASE, THAT IT

12:39PM 13 COULD TELL YOU A SPECIFIC EDISON BY SERIAL NUMBER?

12:40PM 14 A. I DON'T BELIEVE IT COULD.

12:40PM 15 Q. OKAY. BUT IT WOULD TELL YOU WHETHER IT WAS AN EDISON OR

12:40PM 16 IMMULITE OR SOME OTHER --

12:40PM 17 A. YES, YES. I BELIEVE SO, YES.

12:40PM 18 Q. AND YOU UNDERSTAND THAT IT WOULD ALSO TELL YOU THE

12:40PM 19 REFERENCE RANGE FOR THAT PARTICULAR TEST?

12:40PM 20 A. YES.

12:40PM 21 Q. THE TIME OF ARRIVAL IN THE LAB OF THE SAMPLE; CORRECT?

12:40PM 22 A. YES.

12:40PM 23 Q. AND THE TIME THAT THE REPORT WAS RELEASED?

12:40PM 24 A. YES.

12:40PM 25 Q. AND, OF COURSE, THE ACTUAL RESULTS; RIGHT?

12:40PM 1 A. YES.

12:40PM 2 Q. AND ALSO QUALITY CONTROL INFORMATION?

12:40PM 3 A. YES.

12:40PM 4 Q. AND YOU YOURSELF, YOU WERE ABLE TO LOG IN, AND YOU DID LOG

12:40PM 5 INTO THE LIS SYSTEM TO REVIEW DATA ON YOUR OWN; CORRECT?

12:40PM 6 A. YES, I DID.

12:40PM 7 Q. OKAY. AND WHEN INQUIRIES CAME IN FROM PHYSICIANS, YOU

12:40PM 8 WOULD GO TO LIS TO SEE HOW THERANOS RESULTS WERE TRENDING;

12:41PM 9 CORRECT?

12:41PM 10 A. I DON'T RECALL.

12:41PM 11 Q. OKAY. TAKE A LOOK AT, IT SHOULD BE IN THE SAME BINDER,

12:41PM 12 EXHIBIT 28404.

12:41PM 13 A. OKAY.

12:41PM 14 Q. AND I'M GOING TO REFER YOU SPECIFICALLY TO PAGE 2908.

12:41PM 15 A. OH, GOT IT.

12:41PM 16 Q. THANK YOU.

12:41PM 17 AND I'M GOING TO REFER YOU IN PARTICULAR TO LINES 24 AND

12:42PM 18 25?

12:42PM 19 A. OKAY.

12:42PM 20 Q. AND DOES THAT REFRESH YOUR MEMORY THAT WHEN INQUIRIES CAME

12:42PM 21 IN, YOU COULD GO TO LIS AND SEE HOW THE THERANOS RESULTS HAD

12:42PM 22 BEEN TRENDING?

12:42PM 23 A. YES, IT DOES.

12:42PM 24 Q. OKAY. AND THAT IS, IN FACT, WHAT HAPPENED; RIGHT?

12:42PM 25 A. YES.

12:42PM 1 Q. AND THEN YOU COULD ALSO SEE HOW MANY RESULTS ARE OUT OF  
12:42PM 2 REFERENCE RANGE WHEN YOU WERE DOING THIS WORK; RIGHT?  
12:42PM 3 A. YES.  
12:42PM 4 Q. AND ESSENTIALLY, WHEN AN INQUIRY CAME IN, YOU WOULD USE  
12:42PM 5 LIS TO DO AN INVESTIGATION; RIGHT?  
12:42PM 6 A. YES.  
12:42PM 7 Q. AND THAT'S THE WAY YOU RESOLVED, AT LEAST ONE OF THE TOOLS  
12:42PM 8 YOU USED TO RESOLVE, WHEN A PHYSICIAN INQUIRY CAME IN, WHAT WAS  
12:42PM 9 GOING ON AND HOW YOU MIGHT RESPOND TO THE PHYSICIAN?  
12:42PM 10 A. CORRECT.  
12:42PM 11 Q. AND ULTIMATELY DETERMINE WHETHER YOU COULD TELL THE  
12:42PM 12 PHYSICIAN THE TEST IS VALID OR, YOU KNOW, SOMETHING ELSE SHOULD  
12:42PM 13 BE DONE OR THAT SORT OF THING?  
12:42PM 14 A. CORRECT.  
12:43PM 15 Q. ALL RIGHT. NOW, WITH RESPECT TO LIS, YOU TOLD THE  
12:43PM 16 GOVERNMENT ABOUT LIS AS EARLY AS JUNE 2017; CORRECT?  
12:43PM 17 A. I DON'T RECALL.  
12:43PM 18 Q. OKAY. TAKE A LOOK AT EXHIBIT 28324.  
12:43PM 19 MR. BOSTIC: I HAVE A RELEVANCE OBJECTION TO THIS  
12:43PM 20 LINE.  
12:43PM 21 THE COURT: THERE WAS A RELEVANCE OBJECTION.  
12:43PM 22 MR. COOPERSMITH: YOUR HONOR, I THINK WE'VE  
12:43PM 23 DISCUSSED THIS PRETTY EXTENSIVELY. THIS IS PART OF THE  
12:43PM 24 DEFENSE.  
12:43PM 25 THE COURT HAS ALREADY RULED THAT THE QUALITY AND NATURE OF

12:43PM 1 THE GOVERNMENT'S INVESTIGATION IS AT ISSUE AND IT'S FAIR GAME,  
12:43PM 2 AND THAT'S WHAT THE RELEVANCE IS.  
12:43PM 3 THE COURT: WELL, THANK YOU.  
12:43PM 4 LET'S HEAR WHAT YOUR QUESTION IS IN REGARDS TO 28324, IS  
12:44PM 5 IT?  
12:44PM 6 MR. COOPERSMITH: YES.  
12:44PM 7 Q. SO, DR. ROSENDORFF, I'M JUST HAVING YOU LOOK AT  
12:44PM 8 EXHIBIT 28324.  
12:44PM 9 DO YOU SEE THAT?  
12:44PM 10 A. YES.  
12:44PM 11 Q. AND THAT'S REFLECTING THE INTERVIEW OF YOU ON JUNE 7TH,  
12:44PM 12 2017?  
12:44PM 13 A. YES.  
12:44PM 14 Q. AND I THINK I REFERRED TO THIS EARLIER, BUT THIS IS ONE OF  
12:44PM 15 THOSE INTERVIEWS WHERE YOU'RE TALKING TO A GROUP OF AGENTS AND  
12:44PM 16 OTHERS, AND PROSECUTORS?  
12:44PM 17 A. YES.  
12:44PM 18 Q. AND ONE OF THOSE TIMES WHEN YOU KNEW YOU HAD TO BE  
12:44PM 19 TRUTHFUL?  
12:44PM 20 A. YES.  
12:44PM 21 Q. AND YOU WERE TRYING TO DO THAT; RIGHT?  
12:44PM 22 A. YES.  
12:44PM 23 Q. AND IN THAT SESSION, IF I CAN REFER YOU TO PAGE 5, PLEASE,  
12:44PM 24 SIR.  
12:44PM 25 A. I HAVE IT.

12:44PM 1 Q. IF YOU LOOK AT THE MIDDLE OF THE PAGE, THERE'S A PARAGRAPH  
12:44PM 2 THAT STARTS WITH "INFORMATION."  
12:44PM 3 A. OKAY. I HAVE IT NOW.  
12:44PM 4 Q. IN THAT PARAGRAPH, YOU IN THIS INTERVIEW, IN FACT,  
12:44PM 5 INFORMED THE GOVERNMENT THAT THERE WAS A SYSTEM CALLED LIS;  
12:45PM 6 CORRECT?  
12:45PM 7 A. YES.  
12:45PM 8 Q. AND THAT THE SYSTEM WAS PUT INTO USE RIGHT AROUND THE TIME  
12:45PM 9 OF THE WALGREENS LAUNCH?  
12:45PM 10 A. YES.  
12:45PM 11 Q. AND THAT IT COULD SEARCH TEST RESULTS BY ANALYTE, ANALYTE  
12:45PM 12 VALUES IN PATIENTS?  
12:45PM 13 A. YES.  
12:45PM 14 Q. AND THAT DOCUMENTS WERE AUTO SIGNED THROUGH THE LIS  
12:45PM 15 SYSTEM; RIGHT?  
12:45PM 16 THE COURT: IS THIS IN REGARDS TO A 613 ISSUE OR --  
12:45PM 17 MR. COOPERSMITH: NO, YOUR HONOR. I'M SIMPLY  
12:45PM 18 POINTING OUT THAT HE INFORMED THE GOVERNMENT ABOUT THE LIS  
12:45PM 19 SYSTEM IN JUNE OF 2017, AND I THINK I'M DONE WITH THAT TOPIC.  
12:45PM 20 THE COURT: OKAY. AS OPPOSED TO -- YOU WERE READING  
12:45PM 21 A DOCUMENT.  
12:45PM 22 ANYHOW, WHY DON'T YOU FINISH YOUR QUESTION? GO AHEAD AND  
12:45PM 23 FINISH YOUR QUESTION.  
12:45PM 24 MR. COOPERSMITH: I DON'T HAVE ANY FURTHER QUESTIONS  
12:45PM 25 ABOUT THIS DOCUMENT.

12:45PM 1 THE COURT: OKAY. ALL RIGHT. THANK YOU.

12:46PM 2 BY MR. COOPERSMITH:

12:46PM 3 Q. I'D LIKE TO MOVE TO A DIFFERENT TOPIC, DR. ROSENDORFF.

12:46PM 4 AND DURING THE DIRECT EXAMINATION FROM WEDNESDAY, YOU

12:46PM 5 TALKED ABOUT QUALITY CONTROL PROCEDURES AT THERANOS; RIGHT?

12:46PM 6 A. YES, I DID.

12:46PM 7 Q. OKAY. AND THAT WAS SOMETHING THAT WAS DONE IN THE CLIA

12:46PM 8 LAB; CORRECT?

12:46PM 9 A. CORRECT.

12:46PM 10 Q. AND IT WAS DONE FOR EDISON DEVICES THAT WERE RUNNING BLOOD

12:46PM 11 TESTS?

12:46PM 12 A. CORRECT.

12:46PM 13 Q. AND ALSO MODIFIED PREDICATES?

12:46PM 14 A. CORRECT.

12:46PM 15 Q. AND ALSO UNMODIFIED PREDICATES?

12:46PM 16 A. CORRECT.

12:46PM 17 Q. AND ANY LAB HAS TO DO QUALITY CONTROL IN ORDER TO MAKE

12:46PM 18 SURE THAT THE TESTING INSTRUMENTS ARE PERFORMING IN A WAY THAT

12:46PM 19 IS APPROPRIATE FOR TESTING HUMAN BLOOD SAMPLES; RIGHT?

12:46PM 20 A. CORRECT.

12:46PM 21 Q. AND AT THERANOS, IN FACT, THE QUALITY CONTROL ON ALL THOSE

12:46PM 22 DEVICES WAS DONE ON A DAILY BASIS?

12:46PM 23 A. WELL, SOMETIMES MORE. I MEAN, SOMETIMES MORE FREQUENTLY

12:47PM 24 THAN THAT.

12:47PM 25 Q. OKAY. SO AT LEAST DAILY, BUT SOMETIMES MORE FREQUENTLY?

12:47PM 1 A. YEAH, YEAH.

12:47PM 2 Q. AND THE PROTOCOL WAS THAT IF A DEVICE DIDN'T PASS QUALITY

12:47PM 3 CONTROL, THEN IT WOULDN'T BE USED FOR PATIENT TESTING?

12:47PM 4 A. CORRECT.

12:47PM 5 Q. UNTIL FURTHER STEPS WERE TAKEN?

12:47PM 6 A. CORRECT.

12:47PM 7 Q. AND THAT COULD INVOLVE RECALIBRATION; RIGHT?

12:47PM 8 A. CORRECT.

12:47PM 9 Q. AND THAT WAS TRUE FOR ANY DEVICE, INCLUDING PREDICATES?

12:47PM 10 A. CORRECT.

12:47PM 11 Q. OR MODIFIED PREDICATES?

12:47PM 12 A. CORRECT.

12:47PM 13 Q. OR EDISON DEVICES?

12:47PM 14 A. CORRECT.

12:47PM 15 Q. AND YOU YOURSELF DIDN'T RUN THE SAMPLES IN THAT MACHINE;

12:47PM 16 RIGHT?

12:47PM 17 A. UM, I THINK I RAN A FEW AFTER I JOINED THE COMPANY.

12:47PM 18 Q. OKAY.

12:47PM 19 A. I WANTED TO LEARN HOW IT WAS DONE, SO I HAD SOME OF THE

12:47PM 20 CLS'S TRAIN ME.

12:47PM 21 Q. OKAY. THAT MAKES SENSE.

12:47PM 22 BUT GOING -- YOU KNOW, ON A ROUTINE BASIS, IT WAS LAB

12:47PM 23 ASSOCIATES AND OTHER PEOPLE LIKE THAT; RIGHT?

12:47PM 24 A. CORRECT.

12:47PM 25 Q. OKAY. BUT YOU WERE OVERSEEING THAT PROCESS AS LAB

12:47PM 1 DIRECTOR?

12:47PM 2 A. CORRECT.

12:47PM 3 Q. OKAY. I'D LIKE TO TAKE A LOOK AT AN EXHIBIT WITH YOU, AND

12:48PM 4 I BELIEVE IT'S 1430.

12:48PM 5 I BELIEVE IT IS ALREADY IN EVIDENCE, YOUR HONOR.

12:48PM 6 OKAY. DO YOU SEE THAT EXHIBIT 1430 IS AN EMAIL FROM YOU

12:48PM 7 TO THE ENTIRE CLIA LAB --

12:48PM 8 A. YES.

12:48PM 9 Q. -- EMAIL ADDRESS?

12:48PM 10 AND THAT WOULD HAVE INCLUDED ALL OF THE PEOPLE WHO WORKED

12:48PM 11 IN THE CLIA LAB; RIGHT?

12:48PM 12 A. CORRECT.

12:48PM 13 Q. AND MAYBE OTHERS?

12:48PM 14 A. CORRECT.

12:48PM 15 Q. AND IN THAT EMAIL YOU'RE SAYING, "DEAR CLIA,

12:48PM 16 "PLEASE REFER TO THE FOLLOWING QC POLICIES."

12:48PM 17 RIGHT?

12:48PM 18 A. YES.

12:48PM 19 Q. AND THIS IS ON JANUARY 16TH, 2014?

12:48PM 20 A. CORRECT.

12:48PM 21 Q. AND YOU'RE COMMUNICATING TO THE CLIA LAB EMPLOYEES THAT

12:48PM 22 THESE ARE QC POLICIES THAT YOU WANT THEM TO FOLLOW; RIGHT?

12:48PM 23 A. YES.

12:49PM 24 Q. OKAY. AND THEN IF YOU GO TO THE NEXT PAGE, EVEN THOUGH

12:49PM 25 THERE'S AN EMAIL WITH YOUR -- FROM YOU, THERE'S NOT A

12:49PM 1 SIGNATURE, OR THERE WAS NO SIGNATURES ON THIS PAGE.

12:49PM 2 DO YOU SEE THAT?

12:49PM 3 A. YES.

12:49PM 4 Q. AND YOU PROBABLY CAN'T REMEMBER WHY THAT IS; RIGHT?

12:49PM 5 A. I DON'T RECALL.

12:49PM 6 Q. OKAY. BUT THEN LET'S GO TO THE NEXT PAGE.

12:49PM 7 AND THEN THERE'S A DAILY QC SECTION.

12:49PM 8 DO YOU SEE THAT?

12:49PM 9 A. YES.

12:49PM 10 Q. AND THAT SAYS, "RUN AT LEAST 2 AND PREFERABLY 3 CONTROLS"?

12:49PM 11 A. YES.

12:49PM 12 Q. AND THEN IF YOU GO ON, THERE'S A CONTINUOUS QC SECTION?

12:49PM 13 A. YES.

12:49PM 14 Q. AND THAT CONTINUOUS QC IS SOMETHING DIFFERENT THAN DAILY

12:49PM 15 QC; RIGHT?

12:49PM 16 A. CORRECT.

12:49PM 17 Q. AND IT'S A PROCESS WHERE OVER TIME YOU LOOK AT THE TRENDS

12:49PM 18 OF THE QC; RIGHT?

12:49PM 19 A. CORRECT. A QC -- A QC RESULT CAN BE ASSESSED RELATIVE TO

12:49PM 20 OTHER HISTORICAL QC RESULTS AND RESULT IN A FAILURE, IF THAT

12:50PM 21 MAKES SENSE.

12:50PM 22 FOR INSTANCE, 2.7, "TEN CONSECUTIVE OBSERVATIONS ON THE

12:50PM 23 SAME SIDE OF THE MEAN LINE," YOU KNOW, NONE OF THOSE QC RESULTS

12:50PM 24 IN AND OF THEMSELVES WOULD BE A FAILURE.

12:50PM 25 BUT WHEN YOU GET TEN ON THE SAME SIDE OF THE LINE, YOU

12:50PM 1 KNOW, ONE DAY YOU GET THE TENTH AND THEN YOU FAIL ACCORDING TO  
12:50PM 2 THE WESTGARD RULES.

12:50PM 3 Q. RIGHT. AND UNDER THE CONTINUOUS QC RULES, LABS LOOK AT  
12:50PM 4 THAT WITH REFERENCE TO SOMETHING CALLED THE WESTGARD RULES?

12:50PM 5 A. YES.

12:50PM 6 Q. AND IS THERE SOMETHING CALLED LEVEY-JENNINGS CHARTS THAT  
12:50PM 7 GO INTO THAT?

12:50PM 8 A. CORRECT.

12:50PM 9 Q. OKAY. AND THIS IS REALLY JUST LOOKING AT QC OVER TIME AS  
12:50PM 10 OPPOSED TO LIKE ON A DAILY BASIS; RIGHT?

12:50PM 11 A. CORRECT.

12:50PM 12 Q. AND THE POLICY IS THAT EVEN IF QC WERE TO PASS ON A GIVEN  
12:50PM 13 INSTRUMENT EVERY DAY, YOU WOULD STILL PULL THE INSTRUMENT IF IT  
12:50PM 14 WAS -- IF THE TRENDING OVER TIME WAS NOT UP TO SNUFF; RIGHT?

12:51PM 15 A. CORRECT.

12:51PM 16 Q. OKAY. AND THAT WAS THE POLICY?

12:51PM 17 A. CORRECT.

12:51PM 18 Q. OKAY. IF YOU GO TO PAGE 4 OF THE DOCUMENT.  
12:51PM 19 AND THIS PAGE REFERENCES EDISON QC IN PARTICULAR; RIGHT?

12:51PM 20 A. YES.

12:51PM 21 Q. AND I THINK YOU TESTIFIED ON DIRECT ABOUT THE NEED TO  
12:51PM 22 ESTABLISH QC RANGES?

12:51PM 23 A. YES.

12:51PM 24 Q. AND THAT'S REFLECTED IN SECTION 3.1?

12:51PM 25 A. YES.

12:51PM 1 Q. AND THEN IT TALKS ABOUT THE ACCEPTABLE LOW AND HIGH QC  
12:51PM 2 RANGES WITH REFERENCE TO TWO STANDARD DEVIATIONS.  
12:51PM 3 DO YOU SEE THAT?  
12:51PM 4 A. YES.  
12:51PM 5 Q. AND STANDARD DEVIATIONS, THESE ARE JUST A REFERENCE TO HOW  
12:51PM 6 FAR AWAY FROM A GIVEN VALUE IT CAN BE AND STILL BE ABLE TO  
12:51PM 7 PASS; RIGHT?  
12:51PM 8 A. WELL, YEAH, STANDARD DEVIATION IS STATISTICAL. SO WHEN  
12:51PM 9 YOU MINUS 2 SD'S -- I DON'T WANT TO GET TOO TECHNICAL. IT'S  
12:52PM 10 PROBABLY NOT NECESSARY.  
12:52PM 11 Q. IT'S PROBABLY NOT.  
12:52PM 12 A. YEAH.  
12:52PM 13 Q. BUT I WILL JUST ASK YOU THIS, THIS -- FROM YOUR EXPERIENCE  
12:52PM 14 AS A LAB DIRECTOR, YOU KNOW, USING THESE STANDARD DEVIATION  
12:52PM 15 MEASURES WITH QUALITY CONTROL, THAT'S A TYPICAL LAB PRACTICE;  
12:52PM 16 RIGHT?  
12:52PM 17 A. YES, IT IS.  
12:52PM 18 Q. YOU WEREN'T DOING ANYTHING UNUSUAL OR DIFFERENT?  
12:52PM 19 A. NO, I WAS NOT.  
12:52PM 20 Q. OKAY. AND THE REASON WHY YOU LOOK AT STANDARD DEVIATIONS  
12:52PM 21 IS BECAUSE YOU'RE REALLY NOT EXPECTING, IF YOU RUN A PARTICULAR  
12:52PM 22 SAMPLE, OR EVEN A BIORAD SAMPLE FOR QC, YOU'RE NOT EXPECTING TO  
12:52PM 23 GET EXACTLY THE SAME VALUE EVERY TIME YOU RUN THAT; RIGHT?  
12:52PM 24 A. THE CLOSER THOSE VALUES ARE, THE BETTER THE TEST.  
12:52PM 25 Q. OF COURSE. BUT YOU'RE NOT EXPECTING AN IDENTICAL TEST;

12:52PM 1 RIGHT?

12:52PM 2 A. IF YOU STEP ON A SCALE TWICE YOU'RE GOING TO GET A

12:53PM 3 DIFFERENT READING.

12:53PM 4 Q. AND IF, FOR EXAMPLE, SOMEONE WERE TO TAKE A BLOOD SAMPLE

12:53PM 5 FROM ME AND RUN IT ON ANY BLOOD TESTING INSTRUMENT TWO TIMES,

12:53PM 6 FIVE TIMES, TEN TIMES, YOU WOULD NOT EXPECT THE IDENTICAL

12:53PM 7 NUMBER?

12:53PM 8 A. NO.

12:53PM 9 Q. AND THAT WOULD BE REALLY RARE?

12:53PM 10 A. YES, IT WOULD BE RARE.

12:53PM 11 Q. OKAY. BUT YOU'RE HOPING, IF THE INSTRUMENT IS FUNCTIONING

12:53PM 12 PROPERLY, THAT IF IT'S CLOSE ENOUGH, THAT YOU COULD

12:53PM 13 STATISTICALLY DECIDE THAT IT'S APPROPRIATE, IT'S GOING TO PASS;

12:53PM 14 RIGHT?

12:53PM 15 A. YES.

12:53PM 16 Q. OKAY. AND THAT'S WHAT THIS REALLY IS DOING, THE STANDARD

12:53PM 17 DEVIATION METHODOLOGY; RIGHT?

12:53PM 18 A. YES.

12:53PM 19 Q. AND IF YOU GO TO THE EDISON DAILY QC SECTION OF THIS.

12:53PM 20 THIS IS THE SECTION THAT DEALS WITH THE DAILY QUALITY ON

12:53PM 21 THE EDISON MACHINE; RIGHT?

12:53PM 22 A. YES.

12:53PM 23 Q. SO LET'S JUST GO THROUGH THAT. IT SAYS 3.2.1, "RUN AT

12:53PM 24 LEAST 2 AND PREFERABLY LEVELS. ENSURE QC MATERIAL IS NOT

12:53PM 25 OUTDATED/EXPIRED."

12:54PM 1 DO YOU SEE THAT?

12:54PM 2 A. YES.

12:54PM 3 Q. AND SO AS A STARTING POINT, THE PERSON WHO IS DOING THIS

12:54PM 4 TEST HAS TO MAKE SURE THE REAGENT IS NOT EXPIRED; RIGHT?

12:54PM 5 A. CORRECT.

12:54PM 6 Q. BECAUSE THAT COULD AFFECT THE RESULTS?

12:54PM 7 A. CORRECT.

12:54PM 8 Q. BUT THEN IN ADDITION, THE QC RUN HAS TO BE AT LEAST TWO,

12:54PM 9 AND IT DOESN'T -- THERE'S, LIKE, A WORD MISSING?

12:54PM 10 A. YEAH, I THINK, I THINK IT -- I THINK I MEANT THREE JUST

12:54PM 11 BASED ON LOOKING AT A PREVIOUS DOCUMENT. TWO AND PREFERABLY

12:54PM 12 THREE IS WHAT I MEANT TO SAY.

12:54PM 13 Q. OKAY. TWO, AND PREFERABLY THREE?

12:54PM 14 A. YEAH.

12:54PM 15 Q. AND SO THAT MEANS THAT IN ORDER FOR A MACHINE, AN EDISON

12:54PM 16 DEVICE IN THIS INSTANCE, TO PASS QC, IT HAS TO PASS AT LEAST

12:54PM 17 TWO AND MAYBE THREE LEVELS; RIGHT?

12:54PM 18 A. CORRECT.

12:54PM 19 Q. AND SO IT'S NOT LIKE A ONE AND DONE, SO TO SPEAK?

12:54PM 20 A. NO.

12:54PM 21 Q. AND SO IF EVERYTHING PASSES REFERRING TO 3.2.2, REFERRING

12:54PM 22 TO THE DOCUMENT, THEN THE MACHINE IS PASSING QC AND IT CAN RUN

12:54PM 23 PATIENT TESTS; RIGHT?

12:54PM 24 A. RIGHT.

12:54PM 25 Q. BUT IF IT FAILS, THEN YOU HAVE TO REDO THE QC?

12:55PM 1 A. YES.

12:55PM 2 Q. AND FAILURE IS DEFINED AS A FAILURE OF ONE OR MORE LEVELS;

12:55PM 3 RIGHT?

12:55PM 4 A. CORRECT.

12:55PM 5 Q. AND SO IF IT PASSES ONE LEVEL AND NOT BOTH, THEN THE

12:55PM 6 MACHINE FAILS QC?

12:55PM 7 A. CORRECT.

12:55PM 8 Q. AND IT WOULD NOT BE USED FOR PATIENT TESTING AT THAT

12:55PM 9 POINT?

12:55PM 10 A. CORRECT.

12:55PM 11 Q. OKAY. AND THEN IF YOU REPEAT QC ON 3.2.4, IF THE QUALITY

12:55PM 12 CONTROL STILL FAILS, THEN YOU HAVE TO RECALIBRATE THE

12:55PM 13 INSTRUMENT?

12:55PM 14 A. RIGHT.

12:55PM 15 Q. AND THAT'S A MORE LENGTHY PROCESS?

12:55PM 16 A. CORRECT.

12:55PM 17 Q. AND THEN ON 3.2.5, THE POLICY IS IF THE QC PASSES AFTER

12:55PM 18 RECALIBRATION, THEN YOU RUN PATIENT SPECIMENS; RIGHT?

12:55PM 19 A. YES.

12:55PM 20 Q. BUT IF IT STILL FAILS, THEN THERE'S, IN CAPITAL LETTERS,

12:55PM 21 STOP; RIGHT?

12:55PM 22 A. YES.

12:55PM 23 Q. AND THAT'S WHEN THE POLICY SAYS YOU HAVE TO CONSULT WITH

12:56PM 24 THE THERANOS TECHNICAL SUPPORT; RIGHT?

12:56PM 25 A. YES.

12:56PM 1 Q. BECAUSE NOW YOU HAVE TO LOOK MORE DEEPLY INTO THE PROBLEM  
12:56PM 2 AND TRY TO FIGURE OUT WHAT IS GOING ON?  
12:56PM 3 A. YES.  
12:56PM 4 Q. OKAY. AND THIS WAS YOUR POLICY?  
12:56PM 5 A. YES, IT WAS.  
12:56PM 6 Q. OKAY. NOW, THIS MAY SOUND LIKE A BASIC QUESTION, BUT  
12:56PM 7 THESE QC TESTS, I THINK WE ESTABLISHED THE OTHER DAY THAT THIS  
12:56PM 8 IS USING, IN THE CASE OF EDISON, SOMETHING -- A PRODUCT FROM A  
12:56PM 9 COMPANY CALLED BIORAD?  
12:56PM 10 A. CORRECT.  
12:56PM 11 Q. AND IT'S NOT ACTUALLY HUMAN BLOOD; RIGHT?  
12:56PM 12 A. THIS IS, UM -- IT'S CONSTITUTED TO RESEMBLE SERUM AND  
12:56PM 13 PLASMA. IT'S GOT -- YOU KNOW, I DON'T WANT TO GO INTO IT TOO  
12:56PM 14 CLOSELY, BUT IT'S THE CLOSEST YOU CAN GET TO HUMAN BLOOD.  
12:56PM 15 IT ALSO NEEDS TO BE PRETTY STABLE TO BE ABLE TO RUN IT FOR  
12:56PM 16 A PERIOD OF TIME. IT NEEDS TO WITHSTAND TRANSPORTATION. IT  
12:56PM 17 HAS DETERGENTS, BUFFERS IN IT AND WHATNOT, PROTEINS.  
12:57PM 18 Q. RIGHT. THAT'S WHAT IS NEEDED TO LIKE MANUFACTURE AND  
12:57PM 19 TRANSPORT THESE TYPE OF QC MATERIALS?  
12:57PM 20 A. YEAH, AND THEY'RE COMMONLY USED FOR QC BLOOD TESTS.  
12:57PM 21 Q. RIGHT. BUT EVEN THOUGH THEY'RE MADE TO MIMIC HUMAN BLOOD,  
12:57PM 22 THEY'RE NOT ACTUALLY HUMAN BLOOD?  
12:57PM 23 A. CORRECT, CORRECT.  
12:57PM 24 Q. AGAIN, IT SOUNDS LIKE A BASIC QUESTION, BUT WHEN ONE OF  
12:57PM 25 THE LABORATORY RUNS PERSONNEL RUN ONE OF THESE QC TESTS AND

12:57PM 1 THEY GET A RESULT, NOTHING IS BEING REPORTED TO A PATIENT AT  
12:57PM 2 THAT POINT; RIGHT?  
12:57PM 3 A. CORRECT. CORRECT, YES.  
12:57PM 4 Q. OKAY. SO LET'S TALK ABOUT AN ISSUE THAT CAME UP ON  
12:57PM 5 DIRECT.  
12:57PM 6 AND AT THERANOS, DO YOU RECALL THERE WAS A PROCEDURE WHERE  
12:57PM 7 THERE WERE ACTUALLY SIX DATA POINTS THAT WERE YIELDED FROM THE  
12:57PM 8 EDISON?  
12:57PM 9 A. YES.  
12:57PM 10 Q. RIGHT?  
12:57PM 11 AND THAT WAS BECAUSE TO RUN A BLOOD TEST, THERE WOULD  
12:57PM 12 ACTUALLY BE THREE EDISON MACHINES USED?  
12:58PM 13 A. THREE AT ONE POINT, AND THEN WHEN THE SIXTH TIP CAME  
12:58PM 14 ABOUT, IT WAS JUST THE ONE INSTRUMENT.  
12:58PM 15 Q. SO ORIGINALLY THERE WERE THREE EDISONS RUNNING A TEST, AND  
12:58PM 16 EACH EDISON HAD TWO TIPS; RIGHT?  
12:58PM 17 A. CORRECT, CORRECT.  
12:58PM 18 Q. BUT THEN YOU REMEMBER ANOTHER POINT IN TIME WHERE THAT WAS  
12:58PM 19 MODIFIED SO THAT THE EDISON WOULD HAVE THREE TIPS?  
12:58PM 20 A. SIX.  
12:58PM 21 Q. OR ALL SIX; RIGHT?  
12:58PM 22 A. CORRECT.  
12:58PM 23 Q. AND SO THAT MEANT THAT YOU ONLY NEEDED ONE EDISON?  
12:58PM 24 A. CORRECT.  
12:58PM 25 Q. AND SO THERE WAS, LIKE, I GUESS A MANUFACTURING CHANGE IN

12:58PM 1 HOW THE EDISONS WERE MANUFACTURED?

12:58PM 2 A. CORRECT.

12:58PM 3 Q. AND SO AT SOME POINT IN TIME YOU NO LONGER NEEDED THE

12:58PM 4 THREE EDISONS, AND YOU COULD DO THE TESTS WITH ONE EDISON?

12:58PM 5 A. CORRECT.

12:58PM 6 Q. AND BECAUSE YOUR SIX DATA POINTS CAME RIGHT FROM THE ONE

12:58PM 7 MACHINE?

12:58PM 8 A. CORRECT.

12:58PM 9 Q. AND YOU DIDN'T NEED THREE ANYMORE?

12:58PM 10 A. CORRECT.

12:58PM 11 Q. BUT EITHER WAY, IN THE PREVIOUS INCARNATION OR THE LATER

12:58PM 12 INCARNATION, YOU'RE STILL GETTING SIX DATA POINTS; RIGHT?

12:58PM 13 A. YES.

12:58PM 14 Q. THEY'RE CALLED TIPS, BUT THEY'RE ESSENTIALLY SIX DATA

12:59PM 15 POINTS?

12:59PM 16 A. CORRECT.

12:59PM 17 Q. AND THE TIPS JUST REFERS TO, LIKE, AN ACTUAL PHYSICAL

12:59PM 18 MECHANISM WITHIN THE DEVICE; RIGHT?

12:59PM 19 A. THE TIP IS -- BASICALLY IT'S A PIECE OF PLASTIC THAT FITS

12:59PM 20 OVER A PROBE, TO MY KNOWLEDGE, AND IT'S COATED WITH ANTIBODIES.

12:59PM 21 I MEAN, EACH OF THOSE TIPS IS INVOLVED IN PRODUCING A SINGLE

12:59PM 22 OBSERVATION, YEAH.

12:59PM 23 Q. OKAY. AND YOU REMEMBER YOU TALKED TO US ON DIRECT THERE

12:59PM 24 WAS A PROCEDURE AT THERANOS WHERE EVEN THOUGH THERE WERE SIX

12:59PM 25 DATA POINTS, THE FINAL ANSWER OR RESULT COULD BE BASED ON FOUR

12:59PM 1 OF THE SIX?

12:59PM 2 A. CORRECT.

12:59PM 3 Q. AND THAT'S SOMETIMES KNOWN AS THE PROCESS OF OUTLIER

12:59PM 4 REMOVAL?

12:59PM 5 A. CORRECT.

12:59PM 6 Q. AND LET'S LOOK AT EXHIBIT 1525, WHICH YOU CAN SEE ON YOUR

12:59PM 7 SCREEN, I THINK.

01:00PM 8 AND EXHIBIT 1525 HAS BEEN PREVIOUSLY ADMITTED, SO WITH

01:00PM 9 YOUR PERMISSION, WE WOULD LIKE TO PUBLISH IT, YOUR HONOR.

01:00PM 10 THE COURT: YES.

01:00PM 11 MR. COOPERSMITH: THANK YOU.

01:00PM 12 Q. LET'S GO TO THE EARLIEST EMAIL IN TIME.

01:00PM 13 AND THIS IS FROM ERIKA CHEUNG.

01:00PM 14 DO YOU SEE THAT?

01:00PM 15 A. YES.

01:00PM 16 Q. AND SHE WAS ONE OF THE LAB ASSOCIATES?

01:00PM 17 A. YES.

01:00PM 18 Q. AND ON FEBRUARY 10TH, 2014, SHE WROTE TO YOU AND JAMIE LIU

01:00PM 19 AND DR. PANDORI?

01:00PM 20 A. YES.

01:00PM 21 Q. AND SHE SAID "I RERAN THE LEVEL 1 QC FOR TSH, IT FAILED

01:00PM 22 AGAIN."

01:00PM 23 A. YES.

01:00PM 24 Q. AND THE DATA IS IN THE -- THERE'S A NUMBER AND IT GOES ON?

01:00PM 25 A. YES.

01:00PM 1 Q. AND SHE GOES ON TO TALK ABOUT RECALIBRATING AND SO FORTH.

01:00PM 2 DO YOU SEE THAT?

01:00PM 3 A. YES.

01:00PM 4 Q. AND THEN LET'S GO TO THE EMAIL AT THE TOP OF PAGE 3.

01:01PM 5 IT SAYS, "HI ADAM,

01:01PM 6 "USED A NEW BSA BUFFER... STILL FAILED. IF I DELETE TO

01:01PM 7 POINT THAT COULD PROBABLY CONSIDERED OUTLIERS ON MY RERUN, THE

01:01PM 8 QC WOULD PASS. I ATTACHED THE DATA SHOWING WHAT I'M TALKING

01:01PM 9 ABOUT. OTHERWISE, I'M NOT SURE WHAT TO DO NOW EXCEPT WAIT

01:01PM 10 UNTIL THE CAPSYS QC'S ARE COMPLETED."

01:01PM 11 RIGHT?

01:01PM 12 A. YES.

01:01PM 13 Q. AND THE CAPSYS, CAPSYS REFERS TO A TYPE OF CARTRIDGE THAT

01:01PM 14 THERANOS WAS MANUFACTURING?

01:01PM 15 A. YES.

01:01PM 16 Q. OKAY. AND THEN IF YOU GO TO THE NEXT PAGE, THEN YOU

01:01PM 17 RESPONDED TO MS. CHEUNG.

01:01PM 18 DO YOU SEE THAT?

01:01PM 19 A. YES.

01:01PM 20 Q. AND YOU WROTE, "HI ERIKA,

01:01PM 21 "YES WE CAN DELETE AS MANY AS 2 OF THE 6 DATA POINTS."

01:01PM 22 RIGHT?

01:01PM 23 A. CORRECT.

01:01PM 24 Q. AND MR. BALWANI IS NOT ON THE EMAIL; RIGHT?

01:01PM 25 A. CORRECT.

01:01PM 1 Q. AND THEN ABOVE THAT, DR. PANDORI SAYS, "IS THIS SOMETHING  
01:01PM 2 THAT CLIA CAN STAND ON AS A POLICY, OR DO YOU WANT THEM TO  
01:02PM 3 CHECK WITH US FIRST BEFORE DOING THIS?"  
01:02PM 4 RIGHT?  
01:02PM 5 A. YES.  
01:02PM 6 Q. AND SO DR. PANDORI IS ASKING YOU A QUESTION; CORRECT?  
01:02PM 7 A. YES.  
01:02PM 8 Q. AND NOBODY ELSE?  
01:02PM 9 A. CORRECT.  
01:02PM 10 Q. AND THEN YOU RESPOND, "THIS RULE WILL BE PART OF THE  
01:02PM 11 ALGORITHM WHEN THE EDISON 3.5 CALCULATIONS ARE AUTOMATED."  
01:02PM 12 RIGHT?  
01:02PM 13 A. YES.  
01:02PM 14 Q. AND THAT ALGORITHM WAS SOMETHING THAT DR. YOUNG WAS  
01:02PM 15 WORKING ON?  
01:02PM 16 A. UM, I DON'T KNOW -- WELL, THAT'S SOMETHING THAT DR. YOUNG  
01:02PM 17 TOLD ME, YES, YES.  
01:02PM 18 Q. OKAY. THAT HE WAS WORKING ON THIS ALGORITHM; RIGHT?  
01:02PM 19 A. YES.  
01:02PM 20 Q. OKAY. BECAUSE HE'S AN EXPERT IN BIOSTATISTICS; RIGHT?  
01:02PM 21 A. I THINK SO, YES, YEAH.  
01:02PM 22 Q. AND THEN DR. PANDORI WROTE ON THE BOTTOM, "SO IT IS OK FOR  
01:02PM 23 THE CLA TO DO THIS AUTOMATICALLY UNTIL THEN I ASSUME."  
01:02PM 24 A. YES.  
01:02PM 25 Q. AND THE CLA IS THE CLINICAL LAB ASSOCIATE?

01:02PM 1 A. YES.

01:02PM 2 Q. AND THAT IS SOMEONE LIKE ERIKA CHEUNG?

01:02PM 3 A. YES.

01:02PM 4 Q. AND THEN ABOVE THAT YOU WROTE, "YES -- IT'S OK IF THEY DO

01:03PM 5 IT -- THAT IS WHY WE ARE RUNNING 3 EDISONS -- TO GET ENOUGH

01:03PM 6 DATA POINTS AND AVERAGE OUT VARIABILITY."

01:03PM 7 RIGHT?

01:03PM 8 A. YES.

01:03PM 9 Q. AND SO YOU'RE APPROVING OF THE PROCESS?

01:03PM 10 A. YES.

01:03PM 11 Q. AND MR. BALWANI IS NOT ON THAT EMAIL EITHER?

01:03PM 12 A. NO.

01:03PM 13 Q. OKAY. LET'S TAKE A LOOK AT EXHIBIT 13809.

01:04PM 14 ACTUALLY, EVEN BEFORE THAT, LET'S JUST SET THAT UP BY

01:04PM 15 LOOKING AT EXHIBIT 20570, MR. ALLEN.

01:04PM 16 DO YOU SEE 20570 IN FRONT OF YOU?

01:04PM 17 A. YES.

01:04PM 18 Q. AND THIS IS AN EMAIL OR INVITATION MEETING FROM MR. GEE.

01:04PM 19 DO YOU SEE THAT?

01:04PM 20 A. YES.

01:04PM 21 Q. AND IT'S FROM JULY 10TH, 2014?

01:04PM 22 A. YES.

01:04PM 23 Q. AND REQUIRED ATTENDEES INCLUDE ADAM ROSENDORFF; RIGHT?

01:04PM 24 A. CORRECT.

01:04PM 25 Q. AND IS IT ABOUT REVIEWING AND DISCUSSING QUARTER 1 AND

01:04PM 1 QUARTER 2 QUALITY?

01:04PM 2 A. YES.

01:04PM 3 Q. AND THAT WAS -- I THINK WE TALKED ABOUT THIS ON WEDNESDAY,

01:04PM 4 BUT MR. GEE IS THE QUALITY CONTROL MANAGER AND FROM TIME TO

01:04PM 5 TIME PRESENTED DATA ON QUALITY CONTROL PERFORMANCE AT THERANOS;

01:04PM 6 RIGHT?

01:04PM 7 A. YES.

01:04PM 8 Q. AND THIS WAS ONE OF THOSE MEETINGS TO TRY TO DO THAT KIND

01:04PM 9 OF PRESENTATION?

01:04PM 10 A. YES.

01:04PM 11 Q. OKAY. AND IF YOU GO TO 20571, THE NEXT EXHIBIT.

01:05PM 12 OH, I'M SORRY, YOUR HONOR. I OFFER 20570.

01:05PM 13 MR. BOSTIC: NO OBJECTION.

01:05PM 14 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

01:05PM 15 (DEFENDANT'S EXHIBIT 20570 WAS RECEIVED IN EVIDENCE.)

01:05PM 16 MR. COOPERSMITH: THANK YOU.

01:05PM 17 Q. AND THEN LET'S GO TO 20571.

01:05PM 18 AND DO YOU SEE THAT ON YOUR SCREEN?

01:05PM 19 A. YES.

01:05PM 20 Q. AND THIS IS WHERE YOU ACCEPTED THE MEETING INVITATION?

01:05PM 21 A. YES.

01:05PM 22 Q. BECAUSE YOU WANTED TO GO TO THE MEETING TO LEARN ABOUT

01:05PM 23 QUALITY CONTROL PERFORMANCE?

01:05PM 24 A. YES.

01:05PM 25 Q. OKAY. NOW LET'S LOOK AT 13809.

01:05PM 1 OKAY. LOOKING AT 13809, THIS IS ACTUALLY THE PRESENTATION

01:05PM 2 THAT MR. GEE MADE AT THAT MEETING; CORRECT?

01:05PM 3 A. I BELIEVE SO.

01:05PM 4 Q. OKAY. AND IT'S THE SAME DATE, RIGHT, JULY 10TH, 2014?

01:06PM 5 A. YES.

01:06PM 6 Q. AND IT'S TITLED QUALITY SYSTEMS PRESENTATION Q1/Q2, 2014

01:06PM 7 REVIEW.

01:06PM 8 DO YOU SEE THAT?

01:06PM 9 A. YES.

01:06PM 10 Q. AND YOU RECALL AT THESE MEETINGS, MR. GEE WOULD MAKE A

01:06PM 11 PRESENTATION ABOUT WHAT HE SAW IN THE QUALITY CONTROL

01:06PM 12 PERFORMANCE?

01:06PM 13 A. YES.

01:06PM 14 Q. AND THAT WAS SO YOU COULD GET THAT INFORMATION?

01:06PM 15 A. USUALLY HE WOULD PRINT THINGS OUT ON A PIECE OF PAPER AND

01:06PM 16 WE WOULD LOOK AT THE PIECE OF PAPER TOGETHER.

01:06PM 17 Q. BUT THEN SOMETIMES HE WOULD SHOW SLIDES?

01:06PM 18 A. I THINK SO.

01:06PM 19 Q. AND THIS IS ONE OF THE OCCASIONS WHERE HE SHOWED SLIDES?

01:06PM 20 A. I THINK SO.

01:06PM 21 MR. COOPERSMITH: OKAY. YOUR HONOR, WE OFFER

01:06PM 22 EXHIBIT 13809.

01:06PM 23 MR. BOSTIC: NO OBJECTION.

01:06PM 24 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

01:06PM 25 (DEFENDANT'S EXHIBIT 13809 WAS RECEIVED IN EVIDENCE.)

01:06PM 1 BY MR. COOPERSMITH:

01:06PM 2 Q. LET'S GO TO THE FIRST PAGE. THAT'S WHAT I READ TO YOU,

01:06PM 3 DR. ROSENDORFF?

01:06PM 4 A. YES.

01:06PM 5 Q. AND IT HAS AN AGENDA ON THE SECOND PAGE?

01:06PM 6 A. YES.

01:06PM 7 Q. AND THAT'S GOING THROUGH THE DIFFERENT THINGS THAT MR. GEE

01:06PM 8 WANTED TO PRESENT; RIGHT?

01:06PM 9 A. YES.

01:07PM 10 Q. OKAY. AND THEN THE NEXT PAGE HAS A MISSION AND CORE

01:07PM 11 STATEMENT.

01:07PM 12 DO YOU SEE THAT?

01:07PM 13 A. YES.

01:07PM 14 Q. IF YOU GO TO PAGE -- I GUESS IT'S THE NEXT PAGE AFTER

01:07PM 15 THAT.

01:07PM 16 DO YOU SEE IT HAS THERANOS LABORATORY LICENSURES?

01:07PM 17 A. YES.

01:07PM 18 Q. AND HERE MR. GEE IS JUST REVIEWING WHICH STATES LICENSED

01:07PM 19 THERANOS FOR OPERATING VARIOUS FACILITIES; IS THAT RIGHT?

01:07PM 20 A. YES.

01:07PM 21 Q. AND THEN THERE'S A REFERENCE, LABORATORY LICENSURES.

01:07PM 22 DO YOU SEE THAT?

01:07PM 23 A. YES.

01:07PM 24 Q. AND THOSE WERE OUTSIDE LABORATORIES THAT THERANOS COULD

01:07PM 25 SEND SAMPLES TO IF THEY WANTED TO; RIGHT?

01:07PM 1 A. YES.

01:07PM 2 Q. AND ONE OF THEM WAS ARUP?

01:07PM 3 A. CORRECT.

01:07PM 4 Q. AND ONE OF THEM WAS UCSF?

01:07PM 5 A. YES.

01:07PM 6 Q. AND THAT WAS -- OKAY. SORRY. LET ME START AGAIN.

01:08PM 7 THE OUTSIDE LABORATORIES, THOSE WERE THERE SO THAT IF

01:08PM 8 THERANOS DIDN'T HAVE A TEST, IT COULD SEND THOSE TO ANOTHER LAB

01:08PM 9 TO DO?

01:08PM 10 A. CORRECT.

01:08PM 11 Q. AND WHEN A PATIENT GOT A RESULT FROM ONE OF THOSE OUTSIDE

01:08PM 12 LABORATORIES, IT SAID RIGHT ON THE REPORT THAT IT WAS FROM ARUP

01:08PM 13 OR SAN FRANCISCO; RIGHT?

01:08PM 14 A. I BELIEVE SO. I MEAN, THAT'S REQUIRED UNDER CLIA, YEAH.

01:08PM 15 YEAH.

01:08PM 16 Q. OKAY. SO THEN MOVING FORWARD THROUGH THE EXHIBIT.

01:08PM 17 IF YOU GO TO NOT THE NEXT PAGE, BUT THE PAGE AFTER THAT,

01:08PM 18 THIS IS CALLED WALGREENS/THERANOS SAMPLES BY STORE; RIGHT?

01:08PM 19 A. YES.

01:08PM 20 Q. AND THIS GOES THROUGH, IN A BAR GRAPH FORM, EACH MONTH AND

01:08PM 21 HOW MANY SAMPLES ARE COMING FROM WALGREENS; IS THAT RIGHT?

01:08PM 22 A. YEAH. I MEAN, IT LOOKS LIKE THERE'S FOUR DIFFERENT

01:08PM 23 LOCATIONS, FOUR DIFFERENT STORES, TESTING --

01:09PM 24 Q. RIGHT.

01:09PM 25 A. -- JOINING OR WHATEVER YOU WANT TO -- TESTING LOCATIONS,

01:09PM 1 YEAH.

01:09PM 2 Q. RIGHT. SO BY STORE, AND AT THE BOTTOM YOU UNDERSTAND THAT

01:09PM 3 THOSE NUMBERS -- IF YOU CAN HIGHLIGHT THE VERY BOTTOM -- THOSE

01:09PM 4 ARE JUST, YOU KNOW, PARTICULAR WALGREENS STORES; RIGHT?

01:09PM 5 A. YES.

01:09PM 6 Q. AND THEN IT'S -- EACH OF THE BARS RELATE TO A PARTICULAR

01:09PM 7 STORE?

01:09PM 8 A. YES.

01:09PM 9 Q. AND THEN IT JUST SHOWS OVER THIS TIME THAT THE SAMPLE

01:09PM 10 VOLUME BY STORE IS GOING UP?

01:09PM 11 A. YES.

01:09PM 12 Q. AND THEN THE NEXT PAGE HAS AN AVERAGE WAIT TIME AT

01:09PM 13 WALGREENS STORES FOR THERANOS TESTING.

01:09PM 14 DO YOU SEE THAT?

01:09PM 15 A. YES.

01:09PM 16 Q. OKAY. THEN IF YOU GO TO THE NEXT PAGE, IT HAS A SECTION

01:09PM 17 ABOUT REDRAWS BY STORE LOCATION.

01:10PM 18 DO YOU SEE THAT?

01:10PM 19 A. YES.

01:10PM 20 Q. AND SO MR. GEE IS TRACKING THIS INFORMATION?

01:10PM 21 A. YES.

01:10PM 22 Q. AND THEN IT HAS, IF YOU GO TO TWO MORE PAGES AFTER THAT,

01:10PM 23 CLIA TRAINING.

01:10PM 24 DO YOU SEE THAT?

01:10PM 25 A. YES.

01:10PM 1 Q. AND THESE ARE JUST VARIOUS TRAINING EXERCISES THAT HAD  
01:10PM 2 GONE ON AT THERANOS?  
01:10PM 3 A. YES.  
01:10PM 4 Q. OKAY. AND THEN IF YOU GO TO PAGE -- THE NEXT PAGE, YOU  
01:10PM 5 SEE THERE'S A PROCESS IMPROVEMENT SECTION?  
01:10PM 6 A. YES.  
01:10PM 7 Q. AND THAT WAS SOMETHING THAT MR. GEE AND EVERYONE WAS  
01:10PM 8 INTERESTED IN, TO CONTINUE TO IMPROVE THE PROCESS; RIGHT?  
01:10PM 9 A. YES.  
01:10PM 10 Q. AND THAT WAS TRUE OF ALL ORGANIZATIONS THAT YOU'VE BEEN A  
01:10PM 11 PART OF; RIGHT?  
01:10PM 12 A. CONTINUOUS QUALITY IMPROVEMENT, YES.  
01:10PM 13 Q. AND THAT'S ACTUALLY A CONCEPT THAT YOU EMBRACE AS A LAB  
01:10PM 14 DIRECTOR?  
01:10PM 15 A. YES, I DO.  
01:10PM 16 Q. OKAY. AND THEN IF YOU SEE THE FIRST BULLET THERE, THAT'S  
01:10PM 17 "IMPROVEMENTS TO LIS."  
01:11PM 18 THAT WAS ONE OF THE BULLETS THAT MR. GEE DISCUSSED?  
01:11PM 19 A. YES.  
01:11PM 20 Q. "PENDING LAB REVIEW, FAX CAPABILITY FROM LIS, AND CRITICAL  
01:11PM 21 REVIEW SCREEN."  
01:11PM 22 DO YOU SEE THAT?  
01:11PM 23 A. YES.  
01:11PM 24 Q. AND SO THESE WERE SOME OF THE THINGS BEING WORKED ON;  
01:11PM 25 RIGHT?

01:11PM 1 A. YES.

01:11PM 2 Q. AND THEN IF YOU GO TO THE NEXT PAGE, YOU SEE THAT THERE'S

01:11PM 3 A QUALITY CONTROL SECTION?

01:11PM 4 A. YES.

01:11PM 5 Q. AND THAT THIS HAS, IN THE LEFT-HAND COLUMN, QUARTER 4.

01:11PM 6 DO YOU SEE THAT?

01:11PM 7 A. YES.

01:11PM 8 Q. AND THAT WOULD BE QUARTER 4 OF 2013; RIGHT?

01:11PM 9 A. YES.

01:11PM 10 Q. SO ROUGHLY THE -- WELL, NOT EVEN ROUGHLY, PRECISELY THE

01:11PM 11 LAST THREE MONTHS OF 2013; RIGHT?

01:11PM 12 A. CORRECT.

01:11PM 13 Q. AND IT SAYS HERE THERE'S 172 ASSAYS PERFORMED.

01:11PM 14 DO YOU SEE THAT?

01:11PM 15 A. YES.

01:11PM 16 Q. AND 10,192 CONTROLS WERE ANALYZED; RIGHT?

01:11PM 17 A. YES.

01:11PM 18 Q. AND .14 PERCENT CONTROLS FAILED.

01:11PM 19 DO YOU SEE THAT?

01:11PM 20 A. YES.

01:11PM 21 Q. AND THEN IF YOU GO TO Q1, PREDICATE, THE NEXT SECTION,

01:12PM 22 THEN IT SAYS -- THIS IS PREDICATE MACHINES; RIGHT?

01:12PM 23 A. YES.

01:12PM 24 Q. SO UNMODIFIED PREDICATE MACHINES?

01:12PM 25 A. CORRECT.

01:12PM 1 Q. AND THERE WERE 132 ASSAYS PERFORMED; CORRECT?

01:12PM 2 A. YES.

01:12PM 3 Q. AND 8,458 CONTROLS WERE ANALYZED; RIGHT?

01:12PM 4 A. CORRECT.

01:12PM 5 Q. AND .75 PERCENT CONTROLS FAILED; RIGHT?

01:12PM 6 A. YES.

01:12PM 7 Q. AND YOU SAID IN YOUR DIRECT TESTIMONY ON WEDNESDAY THAT ON

01:12PM 8 A BAD DAY, I THINK YOU SAID, A PREDICATE MACHINE, UNMODIFIED

01:12PM 9 PREDICATE MACHINE WOULD FAIL 2 TO 3 PERCENT OF THE TIME?

01:12PM 10 A. YES.

01:12PM 11 Q. AND SO APPARENTLY THEY'RE DOING A LITTLE BIT BETTER THAN

01:12PM 12 THAT; RIGHT?

01:12PM 13 A. YES.

01:12PM 14 Q. AND THEN FOR Q1 THERANOS, DO YOU SEE THAT?

01:12PM 15 A. YES.

01:12PM 16 Q. IT SAYS THERE ARE 52 ASSAYS PERFORMED?

01:12PM 17 A. YES.

01:12PM 18 Q. AND 3,879 CONTROLS ARE ANALYZED?

01:12PM 19 A. YES.

01:12PM 20 Q. AND 2.9 PERCENT CONTROLS FAILED?

01:12PM 21 A. I'M JUST READING ALONG WITH YOU, YEAH.

01:12PM 22 Q. RIGHT. WELL, THAT'S WHAT MR. GEE REPORTED?

01:13PM 23 A. I'M SORRY?

01:13PM 24 Q. WELL, YOU DIDN'T WRITE THIS PRESENTATION?

01:13PM 25 A. NO, NO.

01:13PM 1 Q. MR. GEE PRESENTED THE MATERIAL; RIGHT?

01:13PM 2 A. YES, YES.

01:13PM 3 Q. NOT MR. BALWANI?

01:13PM 4 A. NO.

01:13PM 5 Q. AND MR. GEE PRESENTED THIS INFORMATION; RIGHT?

01:13PM 6 A. YES.

01:13PM 7 Q. OKAY. LET'S MOVE TO A DIFFERENT TOPIC, AND THAT'S

01:13PM 8 PROFICIENCY TESTING. ALL RIGHT?

01:13PM 9 A. UH-HUH.

01:13PM 10 Q. AND YOU DISCUSSED THAT AT LENGTH IN YOUR TESTIMONY.

01:13PM 11 A. YES.

01:13PM 12 Q. OKAY. SO YOU DIDN'T -- YOU WEREN'T, I DON'T THINK, SHOWN

01:13PM 13 A DOCUMENT ON DIRECT, BUT YOU REFERRED TO A TIME WHEN SOME

01:14PM 14 PROFICIENCY TESTING MATERIAL WAS RUN ON EDISON DEVICES?

01:14PM 15 A. YES.

01:14PM 16 Q. AND I THINK YOU DESCRIBED IT AS LEFTOVER PROFICIENCY

01:14PM 17 TESTING MATERIAL?

01:14PM 18 A. YES.

01:14PM 19 Q. OKAY. AND YOU RECALL THAT WAS AN INSTANCE WHERE SOME

01:14PM 20 LEFTOVER PROFICIENCY TESTING MATERIAL THAT CAME FROM NEW YORK

01:14PM 21 STATE WAS RUN ON EDISONS; RIGHT?

01:14PM 22 A. AND API AS WELL, YES.

01:14PM 23 Q. OKAY. API AND NEW YORK STATE?

01:14PM 24 A. YES.

01:14PM 25 Q. AND THOSE WERE THE TWO OUTSIDE ORGANIZATIONS THAT SUPPLY

01:14PM 1 PROFICIENCY TESTING MATERIAL?

01:14PM 2 A. YES.

01:14PM 3 Q. RIGHT. AND I THINK YOU ALSO SAID ON DIRECT THAT FOR

01:14PM 4 TRADITIONAL PROFICIENCY TESTING, A LAB RUNS THE PROFICIENCY

01:14PM 5 TESTING SAMPLES; RIGHT?

01:14PM 6 A. YES.

01:14PM 7 Q. AND THEN GETS THE RESULTS, AND THEN THEY SEND THE RESULTS

01:14PM 8 OFF TO THE TESTING AGENCY; RIGHT?

01:14PM 9 A. CORRECT.

01:14PM 10 Q. SO IT COULD HAVE BEEN NEW YORK STATE OR API?

01:14PM 11 A. CORRECT.

01:14PM 12 Q. OR OTHERS; RIGHT?

01:14PM 13 A. CORRECT.

01:14PM 14 Q. OKAY. AND THERE'S -- THE JOB IN TRADITIONAL PROFICIENCY

01:15PM 15 TESTING OF THE TESTING AGENCY IS TO BASICALLY COMPARE THE

01:15PM 16 PROFICIENCY TEST RESULTS TO OTHER RESULTS THAT THEY GET FROM

01:15PM 17 OTHER LABORATORIES AROUND THE COUNTRY THAT ARE RUNNING THE SAME

01:15PM 18 INSTRUMENT; RIGHT?

01:15PM 19 A. CORRECT.

01:15PM 20 Q. SO IT HAS TO BE LIKE AN APPLE-TO-APPLE TYPE OF COMPARISON;

01:15PM 21 RIGHT?

01:15PM 22 A. CORRECT.

01:15PM 23 Q. AND SO IF YOU'RE RUNNING A SIEMENS IMMULITE AND YOU DO

01:15PM 24 PROFICIENCY TESTING ON THAT INSTRUMENT, THEN THE TESTING AGENCY

01:15PM 25 WOULD COMPARE THE RESULTS THAT YOU PROVIDE WITH OTHER LABS THAT

01:15PM 1 RUN THE SAME TYPE OF MATERIAL ON IMMULITES; RIGHT?

01:15PM 2 A. CORRECT.

01:15PM 3 Q. AND THAT'S SOMETIMES CALLED THE PEER GROUP; RIGHT?

01:15PM 4 A. CORRECT.

01:15PM 5 Q. BUT IN OTHER SITUATIONS THERE IS NOT A PEER GROUP; RIGHT?

01:15PM 6 A. CORRECT.

01:15PM 7 Q. BECAUSE THERE'S SOME TYPE OF NOVEL TECHNOLOGY AT WORK;

01:15PM 8 RIGHT?

01:15PM 9 A. SO I THINK FOR CAP, IF THERE ARE TEN OR FEWER USERS, THEY

01:16PM 10 WON'T COMPARE YOU AGAINST THOSE PEERS BECAUSE THERE'S JUST NOT

01:16PM 11 ENOUGH PEOPLE.

01:16PM 12 Q. RIGHT. AND IN THE CASE OF EDISON DEVICES, THERE WERE NO

01:16PM 13 OTHER LABS AS YOU UNDERSTOOD; RIGHT?

01:16PM 14 A. CORRECT.

01:16PM 15 Q. AND IN THE CASE OF MODIFIED PREDICATES, THERE WERE NO

01:16PM 16 OTHER LABS; RIGHT?

01:16PM 17 A. CORRECT.

01:16PM 18 Q. AND THE -- I THINK YOU SAID THIS ON DIRECT, BUT THE

01:16PM 19 SOLUTION TO THAT LACK OF PEER GROUP ISSUE IS TO DO A DIFFERENT

01:16PM 20 FORM OF PROFICIENCY TESTING CALLED AAP; RIGHT?

01:16PM 21 A. CORRECT.

01:16PM 22 Q. AND THAT STANDS FOR ALTERNATIVE ASSESSMENT PROCEDURE;

01:16PM 23 RIGHT?

01:16PM 24 A. CORRECT.

01:16PM 25 Q. OKAY. AND YOU RECOGNIZED THAT THAT WAS THE CORRECT WAY TO

01:16PM 1 DO THINGS FOR SOMETHING LIKE AN EDISON THAT DIDN'T HAVE A PEER  
01:16PM 2 GROUP; RIGHT?  
01:16PM 3 A. YES.  
01:16PM 4 Q. AND IT DOESN'T MEAN THAT YOU CAN'T RUN THE INSTRUMENT, IT  
01:16PM 5 JUST MEANS YOU HAVE TO DO A DIFFERENT TYPE OF PROFICIENCY  
01:16PM 6 TESTING?  
01:16PM 7 A. CORRECT.  
01:16PM 8 Q. OKAY. AND THIS WAS SOMETHING THAT WAS RECOGNIZED PRETTY  
01:16PM 9 EARLY ON AT THERANOS?  
01:16PM 10 A. YES.  
01:16PM 11 Q. IN FACT, I THINK WE SAW IN AN EXHIBIT THAT WAS DATED  
01:16PM 12 BEFORE YOUR TIME, IN 2011, WHERE THERE WAS A SECTION ON THE  
01:17PM 13 NEED TO DO AAP; RIGHT?  
01:17PM 14 A. YES.  
01:17PM 15 Q. OKAY. AND THE AAP THAT WAS AT LEAST IN THE STANDARD  
01:17PM 16 OPERATING PROCEDURE AT THERANOS, AND WE'LL GET TO THAT, BUT  
01:17PM 17 IT'S NOT COMPARING THERANOS RESULTS TO A PEER GROUP OF OTHER  
01:17PM 18 LABORATORIES; RIGHT?  
01:17PM 19 A. NO, IT IS NOT.  
01:17PM 20 Q. IT IS ACTUALLY TAKING HUMAN BLOOD SAMPLES THAT ARE  
01:17PM 21 OBTAINED FROM EMPLOYEES AT THERANOS AND COMPARING THE RESULTS  
01:17PM 22 OF THE ACTUAL HUMAN BLOOD SAMPLES ON EDISON RUNS VERSUS  
01:17PM 23 PREDICATE UNMODIFIED RUNS; RIGHT?  
01:17PM 24 A. YES, THAT WOULD HAVE BEEN ONE WAY TO DO THE AAP. I'D HAVE  
01:17PM 25 TO REFRESH MY MEMORY AS TO EXACTLY WHAT THE DOCUMENT SAID, BUT

01:17PM 1 I THINK THAT'S CORRECT.

01:17PM 2 Q. OKAY. AND I'LL SHOW IT TO YOU IN A FEW MINUTES,

01:17PM 3 DR. ROSENDORFF. THANK YOU.

01:17PM 4 A. YEAH.

01:17PM 5 Q. BUT LET'S JUST GO BACK TO THE SUMMER OF 2013 AND SHOW YOU

01:17PM 6 EXHIBIT 13905.

01:18PM 7 AND DO YOU HAVE THAT IN FRONT OF YOU?

01:18PM 8 A. YES.

01:18PM 9 Q. AND THIS IS AN EMAIL FROM SYLVIA CHANG.

01:18PM 10 DO YOU SEE THAT?

01:18PM 11 A. MAY I BE EXCUSED FOR A FEW MINUTES TO GO TO THE RESTROOM?

01:18PM 12 THE COURT: YES. OF COURSE. LET'S TAKE A BRIEF

01:18PM 13 BREAK, LADIES AND GENTLEMEN, ABOUT SEVEN MINUTES, PLEASE.

01:18PM 14 (RECESS FROM 1:18 P.M. UNTIL 1:29 P.M.)

01:29PM 15 THE COURT: THANK YOU. WE'RE BACK ON THE RECORD.

01:29PM 16 ALL PARTIES PREVIOUSLY PRESENT ARE PRESENT AGAIN.

01:29PM 17 MR. COOPERSMITH.

01:29PM 18 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

01:29PM 19 Q. OKAY. SO BEFORE THE BREAK, DR. ROSENDORFF, WE WERE

01:29PM 20 TALKING ABOUT PROFICIENCY TESTING.

01:29PM 21 A. YES.

01:29PM 22 Q. AND A FORM OF PROFICIENCY TESTING CALLED AAP; RIGHT?

01:29PM 23 A. YES.

01:29PM 24 Q. OKAY. SO WE WERE ABOUT TO GO OVER EXHIBIT 13905.

01:29PM 25 DO YOU STILL SEE THAT?

01:29PM 1 A. YES.

01:30PM 2 Q. AND THAT IS AN EMAIL FROM A SYLVIA CHANG TO MR. BALWANI

01:30PM 3 WITH A COPY TO YOURSELF AND KERRY ELENITOBA-JOHNSON.

01:30PM 4 DO YOU SEE THAT?

01:30PM 5 A. YES.

01:30PM 6 Q. AND ALSO HODA ALAMDAR; RIGHT?

01:30PM 7 A. YES.

01:30PM 8 Q. AND SYLVIA CHANG WAS A LAB SCIENTIST AT THERANOS?

01:30PM 9 A. YES.

01:30PM 10 Q. AND IN THIS CASE SHE WAS SENDING AN EMAIL ABOUT THE

01:30PM 11 HANDLING AND SCHEDULING AND SUBMITTING OF THE PROFICIENCY

01:30PM 12 SAMPLES?

01:30PM 13 A. YES.

01:30PM 14 Q. AND THIS WAS ON JULY 27TH, 2013?

01:30PM 15 A. YES.

01:30PM 16 Q. AND THIS WAS PRIOR TO THE WALGREENS LAUNCH; CORRECT?

01:30PM 17 A. CORRECT.

01:30PM 18 MR. COOPERSMITH: YOUR HONOR, WE OFFER 13905.

01:30PM 19 MR. BOSTIC: NO OBJECTION.

01:30PM 20 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

01:30PM 21 (DEFENDANT'S EXHIBIT 13905 WAS RECEIVED IN EVIDENCE.)

01:30PM 22 BY MR. COOPERSMITH:

01:30PM 23 Q. SO LOOKING AT THE DOCUMENT, DR. ROSENDORFF, AND IT HAS THE

01:30PM 24 DATE THAT I'VE DESCRIBED, BUT YOU SEE IT SAYS, "SUNNY," THIS IS

01:30PM 25 MS. CHANG WRITING, "PER YOUR REQUEST, HERE ARE THE DETAIL FOR

01:30PM 1 HANDLING, SCHEDULING AND SUBMITTING PROFICIENCY SAMPLES."

01:30PM 2 DO YOU SEE THAT?

01:31PM 3 A. YES.

01:31PM 4 Q. SO SHE SEEMS TO BE RESPONDING TO MR. BALWANI; CORRECT?

01:31PM 5 A. YES.

01:31PM 6 Q. AND THEN SHE SAYS SHE'S ATTACHING A STANDARD OPERATING

01:31PM 7 PROCEDURE FOR REFERENCE.

01:31PM 8 DO YOU SEE THAT?

01:31PM 9 A. YES.

01:31PM 10 Q. AND THEN ATTACHED TO THE EXHIBIT, TO THE EMAIL, THERE'S

01:31PM 11 SEVERAL PAGES OF THE DRAFT STANDARD OPERATING PROCEDURE?

01:31PM 12 A. YES.

01:31PM 13 Q. AND THIS WAS FOR YOUR REVIEW; CORRECT?

01:31PM 14 A. YES.

01:31PM 15 Q. AND IT LOOKS LIKE THE DOCUMENT THAT WAS SENT HAS A

01:31PM 16 DOCUMENT NUMBER AT THE TOP.

01:31PM 17 DO YOU SEE THAT?

01:31PM 18 A. YES.

01:31PM 19 Q. AND IT HAS A REVISION: C?

01:31PM 20 A. YES.

01:31PM 21 Q. AND THEN BELOW THAT THERE'S AN EFFECTIVE DATE; RIGHT?

01:31PM 22 A. YES.

01:31PM 23 Q. AND THE EFFECTIVE DATE PRINTED ON THIS DRAFT DOCUMENT IS

01:31PM 24 ACTUALLY BEFORE YOUR TIME AT THERANOS; RIGHT?

01:31PM 25 A. CORRECT.

01:31PM 1 Q. OKAY. AND IT DOESN'T EVEN HAVE A SPACE FOR A SIGNATURE  
01:31PM 2 BECAUSE YOU WEREN'T THERE AT THE TIME; RIGHT?  
01:31PM 3 A. CORRECT.  
01:31PM 4 Q. BUT THEN IF YOU GO TO THE NEXT -- I'M SORRY. IT'S PAGE 3  
01:31PM 5 OF 6, AND IT HAS A SECTION ON RESPONSIBILITIES.  
01:32PM 6 DO YOU SEE THAT?  
01:32PM 7 A. YES.  
01:32PM 8 Q. AND IT SAYS, "LABORATORY TESTING PERSONNEL ARE RESPONSIBLE  
01:32PM 9 FOR THE FOLLOWING," AND THEN THERE'S THREE SUBSECTIONS.  
01:32PM 10 "RECEIVING AND PROCESSING THE PROFICIENCY TESTING  
01:32PM 11 SAMPLES."  
01:32PM 12 A. YES.  
01:32PM 13 Q. "REPORTING THE RESULTS TO THE TS OR DESIGNEE FOR  
01:32PM 14 EVALUATION."  
01:32PM 15 RIGHT?  
01:32PM 16 A. YES.  
01:32PM 17 Q. AND THEN, "COMPLETING APPLICABLE FIELDS ON A PARTICULAR  
01:32PM 18 FORM."  
01:32PM 19 RIGHT?  
01:32PM 20 A. YES.  
01:32PM 21 Q. AND THEN IF YOU GO TO PAGE 4 OF 6.  
01:32PM 22 THEN THERE'S A SECTION ON PROFICIENCY TESTING FOR  
01:32PM 23 COMMERCIAL PT; RIGHT?  
01:32PM 24 A. YES.  
01:32PM 25 Q. AND SO THIS WOULD BE FOR THE UNMODIFIED PREDICATES; RIGHT?

01:32PM 1 A. CORRECT.

01:32PM 2 Q. AND THEN IF YOU GO TO THE NEXT PAGE, 5.3 -- SECTION 5.3.

01:32PM 3 THERE'S A SECTION ABOUT ALTERNATIVE ASSESSMENT PROCEDURE?

01:32PM 4 A. YES.

01:32PM 5 Q. AND THAT WOULD APPLY "FOR NON-CMS REGULATED TESTS OR THOSE

01:33PM 6 WHICH LACK FDA CLEARANCE, COMMERCIAL OR EXTERNAL PT PROGRAMS

01:33PM 7 MAY NOT BE AVAILABLE."

01:33PM 8 DO YOU SEE THAT?

01:33PM 9 A. YES.

01:33PM 10 Q. AND THAT'S THE SAME THING THAT WE WERE JUST TALKING ABOUT

01:33PM 11 WITH AAP; RIGHT?

01:33PM 12 A. YES.

01:33PM 13 Q. OKAY. LET'S PUT THAT ASIDE AND GO TO EXHIBIT 9939.

01:33PM 14 AND THIS HAS BEEN PREVIOUSLY ADMITTED, YOUR HONOR.

01:33PM 15 THE COURT: THANK YOU.

01:33PM 16 BY MR. COOPERSMITH:

01:33PM 17 Q. YOU SEE THIS IS A STANDARD OPERATING PROCEDURE, AND THIS

01:33PM 18 ONE ACTUALLY HAS YOUR NAME ON IT?

01:33PM 19 A. YES.

01:33PM 20 Q. AND THE DATE IS DECEMBER 2ND, 2013?

01:33PM 21 A. YES.

01:33PM 22 Q. AND ACCORDING TO THE TOP, IT'S PROFICIENCY TESTING FOR

01:33PM 23 THERANOS LAB-DEVELOPED TESTS FOR EDISON 3.5?

01:33PM 24 A. YES.

01:33PM 25 Q. OKAY. SO THIS IS THE PROCEDURE THAT YOU ACTUALLY PUT IN

01:33PM 1 PLACE IN EARLY DECEMBER OF 2013 FOR PROFICIENCY TESTING ON THE  
01:33PM 2 ACTUAL THERANOS EDISON DEVICE; RIGHT?  
01:34PM 3 A. YES.  
01:34PM 4 Q. OKAY. IF WE GO TO --  
01:34PM 5 SORRY ABOUT THAT. GO TO PAGE 3 OF 8. YOU SEE IT HAS THE  
01:34PM 6 PURPOSE AT THE TOP?  
01:34PM 7 A. YES.  
01:34PM 8 Q. AND THE PURPOSE OF THIS PROPOSAL IS "TO DEVISE AN  
01:34PM 9 ALTERNATIVE ASSESSMENT PROPOSED (AAP) FOR LABORATORY DEVELOPED  
01:34PM 10 TESTS ON THE EDISON 3.5 IMMUNOASSAY INSTRUMENT."  
01:35PM 11 A. YES.  
01:35PM 12 Q. AND THEN IF YOU GO DOWN UNDER RESPONSIBILITIES, YOU SEE IT  
01:35PM 13 SAYS, "IT IS THE RESPONSIBILITY OF THE TECHNICAL SUPERVISOR TO  
01:35PM 14 ENSURE THAT THE ALTERNATIVE ASSESSMENT PROCEDURE IS CONDUCTED  
01:35PM 15 AT LEAST" TWICE A -- "TWICE TIMES A YEAR FOR ALL 4 ANALYTES."  
01:35PM 16 DO YOU SEE THAT?  
01:35PM 17 A. YES.  
01:35PM 18 Q. AND THEN AT 3.3, THE FIRST SUBSECTION THERE, 3.3.1, IT  
01:35PM 19 SAYS, "THE TECHNICAL SUPERVISOR IS RESPONSIBLE FOR MAKING SURE  
01:35PM 20 THAT PROFICIENCY TESTING SAMPLES ARE IDENTIFIED AND PREPARED  
01:35PM 21 FOR THE LABORATORY."  
01:35PM 22 AND THEN IT GOES ON, IF YOU GO TO THE NEXT PAGE, TO DEFINE  
01:35PM 23 WHAT THE RESPONSIBILITIES OF THE TECHNICAL SUPERVISOR ARE;  
01:35PM 24 RIGHT?  
01:35PM 25 A. YES.

01:35PM 1 Q. AND THEN ON 3.4 IT SAYS, "THE LABORATORY DIRECTOR IS  
01:35PM 2 RESPONSIBLE FOR THE FOLLOWING:  
01:35PM 3 "REVIEWING AND APPROVING EACH PT TESTING EVENT  
01:35PM 4 DOCUMENTATION."  
01:35PM 5 DO YOU SEE THAT?  
01:35PM 6 A. YES.  
01:35PM 7 Q. AND THIS IS THE PROCEDURE THAT YOU PUT IN PLACE?  
01:35PM 8 A. YES.  
01:35PM 9 Q. AND YOU ACTUALLY DEFINED YOUR OWN RESPONSIBILITIES THERE  
01:35PM 10 IN 3.4?  
01:35PM 11 A. YES.  
01:35PM 12 Q. OKAY. NOBODY ELSE WAS RESPONSIBLE FOR THAT 3.4.1 ITEM?  
01:36PM 13 A. NO.  
01:36PM 14 Q. OKAY. AND THEN IF YOU GO TO PAGE 5, I THINK I MAY HAVE  
01:36PM 15 REFERENCED THIS BEFORE, BUT DO YOU SEE THAT THERE'S A  
01:36PM 16 PROCEDURE?  
01:36PM 17 A. YES.  
01:36PM 18 Q. AND THIS DEFINES ACTUALLY HOW THE AAP PROCEDURE WOULD  
01:36PM 19 WORK; RIGHT?  
01:36PM 20 A. YES.  
01:36PM 21 Q. AND IT'S "OBTAINED 5 VENOUS CLINICAL SAMPLES FROM AN  
01:36PM 22 IN-HOUSE COLLECTION."  
01:36PM 23 A. RIGHT.  
01:36PM 24 Q. THAT MEANS FROM EMPLOYEE?  
01:36PM 25 A. YES.

01:36PM 1 Q. AND THAT MEANS YOU'RE COLLECTING REALLY HUMAN BLOOD;

01:36PM 2 RIGHT?

01:36PM 3 A. YES.

01:36PM 4 Q. AND NOT USING PROFICIENCY TESTING MATERIAL THAT IS

01:36PM 5 SUPPLIED BY AN OUTSIDE TESTING LAB; RIGHT?

01:36PM 6 A. CORRECT.

01:36PM 7 Q. AND THAT'S BECAUSE THERE WAS AT LEAST A CONCERN THAT USING

01:36PM 8 THE PT MATERIAL FROM OUTSIDE TESTING SERVICES WOULD CREATE

01:36PM 9 SOMETHING CALLED A MATRIX EFFECT.

01:36PM 10 DO YOU REMEMBER THAT?

01:36PM 11 A. I THINK DANIEL YOUNG MENTIONED THAT IN ONE OF HIS EMAILS.

01:36PM 12 Q. OKAY. DANIEL YOUNG BELIEVED -- WELL, DO YOU RECALL

01:36PM 13 DANIEL YOUNG INFORMED YOU THAT HE THOUGHT THERE WAS SOMETHING

01:37PM 14 CALLED THE MATRIX EFFECT; RIGHT?

01:37PM 15 A. I THINK SO, YES.

01:37PM 16 Q. AND THAT WOULD PRECLUDE THE USE OF OUTSIDE TESTING

01:37PM 17 MATERIAL ON THERANOS INSTRUMENTS; RIGHT?

01:37PM 18 A. THAT WAS HIS POSITION, YES.

01:37PM 19 Q. RIGHT. BUT YOU INSTITUTED A PROCEDURE, WHICH WE'RE NOW

01:37PM 20 LOOKING AT, THAT ACTUALLY PUT IN PLACE A PROCEDURE THAT ADOPTED

01:37PM 21 DANIEL YOUNG'S VIEW OF THAT SITUATION; RIGHT?

01:37PM 22 A. I'M JUST NOT SURE WHEN DANIEL'S EMAIL CAME THROUGH VERSUS

01:37PM 23 THE DATE OF THIS SOP, BUT I RECALL DANIEL SENDING AN EMAIL

01:37PM 24 TALKING ABOUT THE MATRIX EFFECT.

01:37PM 25 Q. OKAY.

01:37PM 1 A. AND THEN I DON'T KNOW WHERE THAT STANDS IN RELATION TO  
01:37PM 2 THIS SOP.

01:37PM 3 Q. BUT DANIEL YOUNG'S RECOMMENDATION ABOUT THE MATRIX EFFECT  
01:37PM 4 WAS, BECAUSE OF THAT, THAT THIS COMPANY SHOULD DO THIS AAP  
01:37PM 5 PROCEDURE; RIGHT?

01:37PM 6 A. THAT WAS HIS POSITION, YES.

01:38PM 7 Q. AND THEN YOU SIGNED THE PROCEDURE WE'RE NOW LOOKING AT  
01:38PM 8 THAT IMPLEMENTED THAT EXACT RECOMMENDATION; RIGHT?

01:38PM 9 A. YES.

01:38PM 10 Q. OKAY. NOW, IF YOU GO TO THE BOTTOM -- WELL, STICK WITH  
01:38PM 11 THAT SAME SECTION.

01:38PM 12 DO YOU SEE 4.6?

01:38PM 13 A. YES.

01:38PM 14 Q. IT SAYS, "CALCULATE THE AVERAGE BIAS OF THE THERANOS LDT  
01:38PM 15 TEST AS FOLLOWS," AND THEN IT HAS AN EQUATION AFTER THAT?

01:38PM 16 A. YES.

01:38PM 17 Q. AND AVERAGE BIAS MEANS THAT THERE MIGHT BE A DIFFERENCE  
01:38PM 18 BETWEEN THE VALUE THAT THE PREDICATE MACHINE OBTAINS VERSUS THE  
01:38PM 19 THERANOS DEVICE; RIGHT?

01:38PM 20 A. SORRY, SAY AGAIN.

01:38PM 21 Q. AVERAGE BIAS, THAT REFERS TO HOW THERE MIGHT BE A  
01:38PM 22 DIFFERENCE IN THE VALUE ACHIEVED OR THE RESULT IN THE  
01:38PM 23 PROFICIENCY TESTING EXPERIMENT FROM THE PREDICATE DEVICE VERSUS  
01:38PM 24 THE THERANOS DEVICE; RIGHT?

01:38PM 25 A. YES.

01:38PM 1 Q. AND THAT IF THAT BIAS IS A CONSISTENT BIAS, IT MIGHT BE  
01:38PM 2 POSSIBLE TO APPLY SOMETHING CALLED A BIAS CORRECTION; RIGHT?  
01:39PM 3 A. YES.  
01:39PM 4 Q. AND THAT WOULD ADJUST FOR THAT ISSUE; RIGHT?  
01:39PM 5 A. YES.  
01:39PM 6 Q. OKAY. AND THAT WAS SOMETHING THAT DANIEL YOUNG WORKED A  
01:39PM 7 LOT AND SPENT A LOT OF TIME ON?  
01:39PM 8 A. THE BIAS CORRECTION WAS DONE ON THE IMMULITE WITH DILUTED  
01:39PM 9 BLOOD SAMPLES TO TRY TO REDUCE THE, YOU KNOW, THE BIAS BETWEEN  
01:39PM 10 THE TWO METHODS, YEAH.  
01:39PM 11 Q. OKAY.  
01:39PM 12 A. BUT IT DOESN'T REALLY PERTAIN TO PROFICIENCY TESTING.  
01:39PM 13 Q. WELL, IN THE SECTION THAT WE'RE LOOKING AT, ONE OF THE  
01:39PM 14 THINGS THAT HAS TO BE DONE AS A STEP IN THE AAP PROCEDURE IS TO  
01:39PM 15 CALCULATE THE AVERAGE BIAS OF THE THERANOS --  
01:39PM 16 A. CORRECT. CORRECT.  
01:39PM 17 Q. AND JUST TO STEP BACK TO MAYBE A MORE BASIC POINT, DO YOU  
01:39PM 18 SEE 4.3 AND 4.4?  
01:39PM 19 A. YES.  
01:39PM 20 Q. AND THIS IS ACTUALLY WHAT IS DEFINING THE AAP TEST; RIGHT?  
01:39PM 21 YOU'RE SPLITTING THE SAMPLES INTO TWO DIFFERENT CONTAINERS;  
01:39PM 22 RIGHT?  
01:39PM 23 A. YES.  
01:39PM 24 Q. AND THOSE ARE CALLED ALIQUOTS; RIGHT?  
01:39PM 25 A. CORRECT.

01:39PM 1 Q. AND THOSE TWO DIFFERENT ALIQUOTS OR CONTAINERS, ONE IS RUN  
01:40PM 2 ON A PREDICATE AND ONE IS RUN ON A THERANOS DEVICE; RIGHT?  
01:40PM 3 A. CORRECT.  
01:40PM 4 Q. AND THE IDEA IS TO COMPARE THE RESULTS?  
01:40PM 5 A. CORRECT.  
01:40PM 6 Q. AND YOU SEE BELOW THAT, THERE'S ACCEPTANCE CRITERIA IN THE  
01:40PM 7 NEXT SECTION?  
01:40PM 8 A. YES.  
01:40PM 9 Q. AND THIS DEFINES WHAT IS REQUIRED FOR THE EXPERIMENT TO BE  
01:40PM 10 DEEMED -- TO PASS; RIGHT?  
01:40PM 11 A. YES.  
01:40PM 12 Q. OKAY. AND THEN ON 5.3, "IF AN ANALYTE FAILS A PROFICIENCY  
01:40PM 13 EVENT, CORRECTIVE ACTIONS WILL BE IMPLEMENTED, ACCORDING TO  
01:40PM 14 ANOTHER PROCEDURE."  
01:40PM 15 DO YOU SEE THAT?  
01:40PM 16 A. YES.  
01:40PM 17 Q. AND NOW, IF YOU GO TO THE NEXT PAGE, PAGE 6, YOU SEE THAT  
01:40PM 18 THERE'S A SECTION CALLED REFERENCES?  
01:40PM 19 A. YES.  
01:40PM 20 Q. AND ONE OF THE REFERENCES -- WELL, THE FIRST REFERENCE ON  
01:40PM 21 7.1 IS TO A PARTICULAR CMS REGULATION; RIGHT?  
01:40PM 22 A. YES.  
01:40PM 23 Q. AND THEN THERE ARE OTHER REFERENCES TO CMS REGULATIONS;  
01:41PM 24 RIGHT?  
01:41PM 25 A. YES.

01:41PM 1 Q. AND THOSE ARE THE ONES THAT ARE CALLED CFR'S; RIGHT?

01:41PM 2 A. CORRECT.

01:41PM 3 Q. AND CODE OF FEDERAL REGULATION?

01:41PM 4 A. CORRECT.

01:41PM 5 Q. AND THEN THERE'S TWO OTHER REFERENCES TO CLSI; RIGHT?

01:41PM 6 A. YES.

01:41PM 7 Q. AND WE TALKED ABOUT THAT EARLIER?

01:41PM 8 A. YES.

01:41PM 9 Q. AND IS THAT THAT AUTHORITATIVE GROUP IN PENNSYLVANIA THAT

01:41PM 10 ISSUES GUIDANCE FOR LABORATORIES; RIGHT?

01:41PM 11 A. YES.

01:41PM 12 Q. IN THIS CASE WHEN YOU WERE MAKING THIS PROCEDURE, YOU

01:41PM 13 ACTUALLY REFERENCED THE CLSI, OR TWO OF THE CLSI GUIDELINES;

01:41PM 14 RIGHT?

01:41PM 15 A. YES.

01:41PM 16 Q. AND LET'S LOOK AT ONE OF THEM, AND THAT'S GP 29. AND IF

01:41PM 17 WE CAN TURN -- OR JUST LOOK AT THE SCREEN, EXHIBIT 20418.

01:41PM 18 OKAY. DO YOU SEE THAT 20418 IS THE PARTICULAR CLSI

01:42PM 19 GUIDELINE THAT WAS REFERENCED IN YOUR PROTOCOL?

01:42PM 20 A. YES.

01:42PM 21 Q. AND YOU REVIEW THIS IN ORDER TO DEVISE THE POLICY; RIGHT?

01:42PM 22 A. YES.

01:42PM 23 Q. AND SO THIS WAS ONE OF THE CASES WHERE YOU WERE RELYING ON

01:42PM 24 THE CLSI MATERIAL TO INFORM WHAT THE PROCEDURE SHOULD BE AT

01:42PM 25 THERANOS?

01:42PM 1 A. YES.

01:42PM 2 MR. COOPERSMITH: YOUR HONOR, WE OFFER 20418.

01:42PM 3 MR. BOSTIC: YOUR HONOR, 401, 403.

01:42PM 4 THE COURT: I'LL SUSTAIN THE OBJECTION WITHOUT

01:42PM 5 ANYTHING FURTHER.

01:42PM 6 I DO THINK THE PROBATIVE VALUE IS OUTWEIGHED BY

01:42PM 7 SUBSTANTIAL PREJUDICE, SO I'LL SUSTAIN THE OBJECTION.

01:42PM 8 BY MR. COOPERSMITH:

01:42PM 9 Q. OKAY. WITHOUT SHOWING IT TO THE JURY, DR. ROSENDORFF,

01:42PM 10 I'LL ASK YOU SOME QUESTIONS ABOUT THIS, AND WE'LL SEE WHAT YOU

01:42PM 11 REMEMBER.

01:42PM 12 SO AS I WAS ASKING YOU, CLSI WAS THIS GROUP THAT PROVIDED

01:42PM 13 GUIDANCE; RIGHT?

01:42PM 14 A. YES.

01:43PM 15 Q. AND IN THIS CASE THEY PROVIDED GUIDANCE ON THE ALTERNATIVE

01:43PM 16 ASSESSMENT PROCEDURE; RIGHT?

01:43PM 17 A. YES.

01:43PM 18 Q. AND THAT YOU REVIEWED THIS TO HELP YOU DEVISE YOUR

01:43PM 19 PROTOCOL; RIGHT?

01:43PM 20 A. YES.

01:43PM 21 Q. AND DO YOU REMEMBER GENERALLY THAT THE CLSI GUIDANCE THAT

01:43PM 22 YOU REFERENCED ACTUALLY DID HAVE INFORMATION ABOUT HOW AAP

01:43PM 23 COULD BE IMPLEMENTED AND SO FORTH?

01:43PM 24 A. I, I REALLY DON'T REMEMBER MUCH ABOUT THIS PARTICULAR

01:43PM 25 DOCUMENT, SIR.

01:43PM 1 Q. OKAY. BUT AT THE TIME -- IT'S NOW SEVERAL YEARS AGO?

01:43PM 2 A. YEAH.

01:43PM 3 Q. AT THE TIME, THAT'S SOMETHING THAT YOU REFERRED TO AS A

01:43PM 4 DOCUMENT TO HELP INFORM WHAT YOU DID; RIGHT?

01:43PM 5 A. YES, IT APPEARS.

01:43PM 6 Q. OKAY. IF YOU COULD TAKE A LOOK AT EXHIBIT 9940.

01:44PM 7 THIS ONE IS NOT ADMITTED YET, BUT YOU CAN TAKE A LOOK AT

01:44PM 8 IT.

01:44PM 9 THIS IS A STANDARD OPERATING PROCEDURE AT THERANOS FOR

01:44PM 10 PROFICIENCY TESTING FOR THERANOS LAB DEVELOPED TESTS.

01:44PM 11 DO YOU SEE THAT?

01:44PM 12 A. YES.

01:44PM 13 Q. AND AGAIN, IT HAS YOUR SIGNATURE ON IT?

01:44PM 14 A. YES.

01:44PM 15 Q. AND THAT'S DECEMBER 2ND, 2013?

01:44PM 16 A. YES.

01:44PM 17 Q. THAT'S THE SAME DATE AS THE OTHER PROCEDURE THAT WE JUST

01:44PM 18 LOOKED AT?

01:44PM 19 A. YES.

01:44PM 20 Q. AND THIS PROCEDURE DEALS WITH DOING PROFICIENCY TESTING ON

01:44PM 21 MODIFIED PREDICATES; RIGHT?

01:44PM 22 A. YES, IT APPEARS.

01:44PM 23 JUST TO BE -- JUST TO CLARIFY, YOU KNOW, NOT ALL OF THE

01:44PM 24 THERANOS LDT'S WERE ON MODIFIED FDA APPROVED DEVICES.

01:44PM 25 Q. WELL, SOME OF THEM ARE ON EDISON; RIGHT?

01:44PM 1 A. WELL, YEAH, SOME OF THE EDISON. THE CBC'S WERE DONE ON  
01:45PM 2 BECTON DICKINSON FLOW CYTOMETRY.  
01:45PM 3 Q. FOR SOME TIME THAT YOU WERE THERE?  
01:45PM 4 A. YES.  
01:45PM 5 Q. AND IF YOU GO TO PAGE 3 OF THE DOCUMENT. YOU SEE THERE'S  
01:45PM 6 A PURPOSE.  
01:45PM 7 AND WITHOUT READING IT TO THE JURY, DO YOU SEE WHAT  
01:45PM 8 SECTION 1.1 SAYS?  
01:45PM 9 A. YES.  
01:45PM 10 Q. AND THAT CLARIFIES WHAT THIS PROTOCOL WAS?  
01:45PM 11 A. YES.  
01:45PM 12 MR. COOPERSMITH: OKAY. YOUR HONOR, WE OFFER  
01:45PM 13 EXHIBIT 9940.  
01:45PM 14 MR. BOSTIC: NO OBJECTION.  
01:45PM 15 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.  
01:45PM 16 (DEFENDANT'S EXHIBIT 9940 WAS RECEIVED IN EVIDENCE.)  
01:45PM 17 BY MR. COOPERSMITH:  
01:45PM 18 Q. AND LET'S JUST GO LOOK AT THAT SAME THING THAT I  
01:45PM 19 MENTIONED, SECTION 1.1.  
01:45PM 20 SO THE PURPOSE HERE IS TO DEVISE AN ALTERNATIVE ASSESSMENT  
01:45PM 21 PROTOCOL FOR LABORATORY DEVELOPED TESTS ON THE ADVIA-1800  
01:45PM 22 CHEMISTRY ANALYZER; RIGHT?  
01:45PM 23 A. YES.  
01:45PM 24 Q. AND SO SPECIFIC TO THAT PARTICULAR DEVICE; RIGHT?  
01:45PM 25 A. YES.

01:45PM 1 Q. THAT THERANOS MODIFIED?

01:45PM 2 A. YES.

01:45PM 3 Q. AND THIS WAS NECESSARY BECAUSE THERANOS HAD MODIFIED IT;

01:46PM 4 RIGHT?

01:46PM 5 A. CORRECT.

01:46PM 6 Q. AND SO WITHOUT GOING THROUGH THE REST OF THE DOCUMENT,

01:46PM 7 THIS IS BASICALLY THE COUNTERPART OF THE PROCEDURE THAT WE SAW

01:46PM 8 ON THE EDISON; RIGHT?

01:46PM 9 A. YES.

01:46PM 10 Q. AND IT DOCUMENTS THE SAME PROCEDURE THAT IS NECESSARY FOR

01:46PM 11 A MODIFIED PREDICATE AS OPPOSED TO AN EDISON; RIGHT?

01:46PM 12 A. I DON'T REMEMBER IF THE PROCEDURE IS THE SAME OR NOT.

01:46PM 13 Q. OKAY. WELL, LET'S JUST LOOK AT ONE THING --

01:46PM 14 A. OKAY.

01:46PM 15 Q. AND IT'S PAGE 5, SECTION 4, PROCEDURE.

01:46PM 16 A. I SEE.

01:46PM 17 Q. DO YOU SEE THERE'S THE SAME PROCEDURE THERE?

01:46PM 18 A. YES.

01:46PM 19 Q. OKAY. OKAY. DR. ROSENDORFF, LET'S GO BACK TO THAT

01:47PM 20 PROFICIENCY TESTING EXPERIMENT THAT WE DISCUSSED, AND I KNOW

01:47PM 21 YOU DISCUSSED IT WITH MR. BOSTIC AS WELL.

01:47PM 22 AND THAT'S THE EXPERIMENT WITH THE NEW YORK STATE AND API

01:47PM 23 SAMPLES THAT WERE DONE ON EDISON; RIGHT?

01:47PM 24 A. YES.

01:47PM 25 Q. AND THOSE WERE THE OUTSIDE PROFICIENCY TESTING MATERIALS?

01:47PM 1 A. YES.

01:47PM 2 Q. AND SO THOSE WERE NOT -- RUNNING THOSE ON EDISON WAS NOT

01:47PM 3 ACCORDING TO THE PROTOCOLS AND PROCEDURE THAT YOU PUT IN PLACE

01:47PM 4 THAT WE JUST LOOKED AT?

01:47PM 5 A. NO.

01:47PM 6 Q. AND IT WAS SOMETHING OUTSIDE OF ANY SOP THAT THE COMPANY

01:47PM 7 HAD?

01:47PM 8 A. CORRECT.

01:47PM 9 Q. AND IT WAS SOMETHING THAT THE COMPANY HAD DECIDED NOT TO

01:47PM 10 DO; RIGHT?

01:47PM 11 A. CORRECT.

01:47PM 12 Q. AND THE EXPERIMENT THAT WAS RUN WITH THOSE SAMPLES,

01:47PM 13 BECAUSE IT WASN'T IN THE PROTOCOL, WOULD YOU AGREE WITH ME THAT

01:47PM 14 THAT EXPERIMENT RUNNING EDISON -- RUNNING PROFICIENCY TESTING

01:47PM 15 SAMPLES FROM NEW YORK STATE AND API ON EDISON, THE RESULTS

01:47PM 16 CANNOT BE DEEMED A FAILURE OF PROFICIENCY TESTING ON EDISON;

01:48PM 17 CORRECT?

01:48PM 18 A. NOT ACCORDING TO THE SOP, NO.

01:48PM 19 Q. OKAY. AND, IN FACT, BECAUSE IT WASN'T THE ACCEPTED

01:48PM 20 PROTOCOL FOR RUNNING PROFICIENCY ON EDISON, IT IS NOT THE CASE

01:48PM 21 THAT IT FAILED PT; CORRECT?

01:48PM 22 A. FORMALLY, NO. CORRECT.

01:48PM 23 Q. OKAY. AND THAT'S SOMETHING THAT -- WELL, I'LL WITHDRAW

01:48PM 24 THAT.

01:48PM 25 LET'S MOVE TO A DIFFERENT EXHIBIT.

01:48PM 1 AT ONE POINT DR. PANDORI DEVELOPED A POWERPOINT, RIGHT,  
01:48PM 2 THAT EXPLAINED WHAT AAP WAS ABOUT AND WHAT SHOULD HAPPEN;  
01:48PM 3 RIGHT?  
01:48PM 4 A. I REMEMBER IT FROM THE HOLMES TRIAL, YEAH.  
01:48PM 5 Q. OKAY. BUT YOU REMEMBER IT FROM THE TIME THAT IT HAPPENED  
01:48PM 6 AS WELL; RIGHT?  
01:48PM 7 A. I THINK SO, YES, YEAH.  
01:49PM 8 Q. OKAY. LET ME SEE IF I CAN FIND THAT.  
01:49PM 9 LET'S LOOK AT EXHIBIT 7440.  
01:49PM 10 THIS IS ALREADY IN EVIDENCE, YOUR HONOR. I THINK IT MAY  
01:49PM 11 BE UP ALREADY, BUT IF NOT, CAN WE PUBLISH IT?  
01:49PM 12 THE COURT: YES, IT MAY BE PUBLISHED.  
01:50PM 13 MR. COOPERSMITH: THANK YOU, YOUR HONOR.  
01:50PM 14 Q. SO, DR. ROSENDORFF, WE'RE LOOKING AT EXHIBIT 7440, AND YOU  
01:50PM 15 SEE THERE'S AN EMAIL FROM DR. PANDORI TO MR. BALWANI AND TO  
01:50PM 16 YOURSELF.  
01:50PM 17 DO YOU SEE THAT?  
01:50PM 18 A. YES.  
01:50PM 19 Q. AND HE'S ATTACHING A SLIDE SHOW HE PUT TOGETHER ABOUT AAP?  
01:50PM 20 A. YES.  
01:50PM 21 Q. AND YOU -- NOW THAT YOU'RE LOOKING AT -- IF YOU WANT TO  
01:50PM 22 FLIP THROUGH THE DOCUMENT, OR MAYBE WE CAN SCROLL THROUGH IT AT  
01:50PM 23 LEAST STARTING WITH THE THIRD PAGE.  
01:50PM 24 YOU RECOGNIZE THIS AS THE POWERPOINT THAT DR. PANDORI PUT  
01:50PM 25 TOGETHER?

01:50PM 1 A. I DON'T -- I DON'T KNOW WHAT YOU'RE ASKING. I DON'T KNOW  
01:50PM 2 WHAT THE QUESTION IS.  
01:50PM 3 Q. YOU KNOW WHAT? LET'S ASK A BETTER QUESTION.  
01:50PM 4 A. OKAY.  
01:50PM 5 Q. THERE'S A PAGE, AND I'M NOT SURE OF THE PAGE NUMBERS, BUT  
01:50PM 6 THE HEADING AT THE TOP SAYS THERANOS TESTS HAVE NO PEER GROUPS?  
01:50PM 7 A. YES.  
01:50PM 8 Q. THAT'S THE PAGE.  
01:50PM 9 A. YES.  
01:50PM 10 Q. AND YOU SEE IT SAYS, "NORMAL OF PT IS THEREFORE NOT  
01:51PM 11 APPROPRIATE."  
01:51PM 12 DO YOU SEE THAT?  
01:51PM 13 A. YES.  
01:51PM 14 Q. AND THAT'S WHAT DR. PANDORI SAID IN HIS POWERPOINT?  
01:51PM 15 A. YES.  
01:51PM 16 Q. AND IT SAYS, "ADDITIONALLY, SYNTHETIC MATRIX OF MANY  
01:51PM 17 COMMERCIALLY AVAILABLE PT SAMPLES IS NOT AN APPROPRIATE ONE FOR  
01:51PM 18 MANY THERANOS TESTS."  
01:51PM 19 RIGHT?  
01:51PM 20 A. YES.  
01:51PM 21 Q. AND THAT'S WHAT YOU WERE SAYING BEFORE THAT DR. YOUNG  
01:51PM 22 THOUGHT; RIGHT?  
01:51PM 23 A. THAT WAS HIS POSITION, YES.  
01:51PM 24 Q. AND DR. PANDORI PUT THAT IN HIS POWERPOINT?  
01:51PM 25 A. YES, HE DID.

01:51PM 1 Q. OKAY. WE CAN PUT THAT ASIDE.

01:51PM 2 WELL, LET'S TAKE A LOOK AT EXHIBIT 12846, WHICH IS NOT IN

01:51PM 3 EVIDENCE.

01:52PM 4 LOOKING AT EXHIBIT 12846, DO YOU SEE THAT THIS IS AN EMAIL

01:52PM 5 STRING AMONG YOU AND CHRISTIAN HOLMES AND ALSO ANAM KHAN?

01:52PM 6 DO YOU SEE THAT?

01:52PM 7 A. YES.

01:52PM 8 Q. AND THIS IS FROM BASICALLY MID-OCTOBER OF 2014?

01:52PM 9 A. YES.

01:52PM 10 Q. OKAY. AND IT RELATES TO A PARTICULAR INQUIRY FROM A

01:52PM 11 PHYSICIAN; IS THAT RIGHT?

01:52PM 12 A. YES.

01:52PM 13 Q. AND THAT WAS A DR. KRAL?

01:52PM 14 A. YES.

01:52PM 15 Q. AND YOU WERE CORRESPONDING WITH ANAM KHAN AND

01:52PM 16 CHRISTIAN HOLMES TO MAKE SURE THAT YOU GET THE INFORMATION TO

01:52PM 17 RESPOND TO THE INFORMATION?

01:52PM 18 A. YES.

01:52PM 19 Q. OKAY.

01:52PM 20 YOUR HONOR, WE OFFER 12846.

01:53PM 21 MR. BOSTIC: NO OBJECTION.

01:53PM 22 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

01:53PM 23 (DEFENDANT'S EXHIBIT 12846 WAS RECEIVED IN EVIDENCE.)

01:53PM 24 BY MR. COOPERSMITH:

01:53PM 25 Q. AND IF YOU GO TO THE EARLIEST EMAIL IN TIME, THAT'S AN

01:53PM 1 EMAIL FROM ANAM, ANAM KHAN.

01:53PM 2 DO YOU SEE THAT? AND THAT'S THE INQUIRY THAT I MENTIONED

01:53PM 3 FROM DR. KRAL?

01:53PM 4 MR. BOSTIC: YOUR HONOR, I BELIEVE THERE'S SOME

01:53PM 5 PATIENT INFORMATION ON THE SCREEN.

01:53PM 6 MR. COOPERSMITH: OH, YES. LET'S TAKE THAT DOWN.

01:53PM 7 THE COURT: LET'S TAKE THAT DOWN.

01:53PM 8 MR. COOPERSMITH: AND ARE YOU ABLE TO REDACT THAT,

01:53PM 9 MR. ALLEN?

01:53PM 10 BY MR. COOPERSMITH:

01:53PM 11 Q. THANK YOU.

01:53PM 12 DR. ROSENDORFF, WE HAVE THE EMAIL UP, BUT WITHOUT THE

01:53PM 13 PATIENT INFORMATION.

01:53PM 14 THAT'S THE EMAIL THAT I WAS REFERRING TO ABOUT DR. KRAL;

01:54PM 15 RIGHT?

01:54PM 16 A. YES.

01:54PM 17 Q. AND YOU -- IF YOU GO TO THE SECOND PAGE OF THE EXHIBIT.

01:54PM 18 YOU'RE EVENTUALLY GOING TO CALL THE PHYSICIAN; RIGHT?

01:54PM 19 A. YES.

01:54PM 20 Q. AND SO YOU ASKED FOR THE PHONE NUMBER?

01:54PM 21 A. YES.

01:54PM 22 Q. AND THEN ON THE EMAIL ON THE FIRST PAGE, THE SECOND EMAIL,

01:54PM 23 THEN YOU WROTE BACK TO ANAM KHAN, "REPORTING ON YOUR CALL WITH

01:54PM 24 DR. KRAL."

01:54PM 25 RIGHT?

01:54PM 1 A. YES.

01:54PM 2 Q. AND IT SAYS, "ANAM,

01:54PM 3 "THANKS -- I JUST GOT OFF THE PHONE WITH DR. KRAL. SHE IS

01:54PM 4 PUZZLED WITH LOW FT4 RESULTS," AND SHE HAS MORE INFORMATION.

01:54PM 5 AND THEN SHE SAYS, "AT STANFORD, ON BOTH RESULTS CAME BACK

01:54PM 6 AS NORMAL."

01:54PM 7 DO YOU SEE THAT?

01:54PM 8 A. YES.

01:54PM 9 Q. AND THEN IT'S REPORTING ON YOUR CALL WITH DR. KRAL; RIGHT?

01:55PM 10 A. YES.

01:55PM 11 Q. AND THEN IT SAYS, "THE M.D. IS EXTREMELY POSITIVE AND

01:55PM 12 EXCITED BY THERANOS AND WANTS US TO CRUSH QUEST DIAGNOSTICS."

01:55PM 13 RIGHT?

01:55PM 14 A. YES.

01:55PM 15 Q. AND WHAT IS QUEST DIAGNOSTICS?

01:55PM 16 A. IT'S AN INTERNATIONAL DIAGNOSTICS COMPANY.

01:55PM 17 Q. ANOTHER TESTING LAB?

01:55PM 18 A. YES.

01:55PM 19 Q. MUCH LARGER THAN THERANOS?

01:55PM 20 A. YES.

01:55PM 21 Q. OKAY. AND THEN AFTER THAT THERE'S A NOTE IN YOUR EMAIL.

01:55PM 22 DO YOU SEE THAT?

01:55PM 23 A. YES.

01:55PM 24 Q. AND YOU WROTE, "AAP PERFORMED ON 4/18/2014 INDICATES THAT

01:55PM 25 THE THERANOS METHOD IS, ON AVERAGE, 10 PERCENT LOWER THAN THE

01:55PM 1 PREDICATE (IMMULITE) METHOD," AND THEN YOU HAVE SOME DATA, AND  
01:55PM 2 THEN YOU SAY, "WHICH IS ACCEPTABLE."  
01:55PM 3 DO YOU SEE THAT?  
01:55PM 4 A. YES.  
01:55PM 5 Q. AND THAT'S WHAT YOU REFERRING TO, TO ANSWER THE DOCTOR'S  
01:55PM 6 INQUIRY?  
01:55PM 7 A. YES.  
01:55PM 8 Q. OKAY. OKAY. LET'S GO TO A DIFFERENT TOPIC.  
01:56PM 9 AND I THINK WE MENTIONED THIS BEFORE, BUT ONE OF THE  
01:56PM 10 ASSAYS THAT WE'VE DISCUSSED DURING THE COURSE OF YOUR  
01:56PM 11 TESTIMONY, AND ALSO WAS AN ISSUE AT THE TIME, IS THE ASSAY  
01:56PM 12 POTASSIUM; RIGHT?  
01:56PM 13 A. YES.  
01:56PM 14 Q. OKAY. SO LET'S LOOK AT THE POTASSIUM ISSUE.  
01:56PM 15 SO STARTING WITH EXHIBIT 9313. LOOKING AT THAT DOCUMENT,  
01:56PM 16 AND WE CAN MAYBE GO TO OTHER PAGES IF NECESSARY, BUT THIS IS  
01:57PM 17 THE POTASSIUM ASSAY DEVELOPMENT REPORT FOR POTASSIUM; IS THAT  
01:57PM 18 RIGHT?  
01:57PM 19 A. YES.  
01:57PM 20 Q. AND THAT'S, AS WE DISCUSSED BEFORE, SOMETHING THAT IS IN  
01:57PM 21 THE RESEARCH AND DEVELOPMENT LAB?  
01:57PM 22 A. YES.  
01:57PM 23 Q. AND THAT'S ALL THE PRELUDE TO EVENTUALLY PUTTING AN ASSAY  
01:57PM 24 INTO THE CLIA LAB; RIGHT?  
01:57PM 25 A. YES.

01:57PM 1 Q. AND YOU RECOGNIZE THIS AS THE POTASSIUM DEVELOPMENT REPORT  
01:57PM 2 FROM RESEARCH AND DEVELOPMENT AT THERANOS?  
01:57PM 3 A. I'M JUST READING THE TITLE OF IT.  
01:57PM 4 Q. OKAY. YOU DON'T HAVE ANY SEPARATE RECOLLECTION OF THE  
01:57PM 5 DOCUMENT?  
01:57PM 6 A. NO.  
01:57PM 7 Q. BUT YOU KNOW THAT THERE WERE A LOT OF ASSAY DEVELOPMENT  
01:57PM 8 REPORTS DONE FOR VARIOUS ASSAYS; RIGHT?  
01:57PM 9 A. YES.  
01:57PM 10 Q. AND IT DOESN'T SURPRISE YOU THAT THIS ONE IS FOR  
01:57PM 11 POTASSIUM?  
01:57PM 12 A. NO.  
01:57PM 13 Q. OKAY. LET'S LOOK AT EXHIBIT 20302.  
01:58PM 14 AND EXHIBIT 20302 IS THE STANDARD OPERATING PROCEDURE FOR  
01:58PM 15 PROVIDING POTASSIUM ON A MODIFIED SIEMENS ASSAY?  
01:58PM 16 A. YES.  
01:58PM 17 Q. OKAY. AND THIS WAS A DOCUMENT THAT YOU SIGNED ON  
01:58PM 18 NOVEMBER 19TH, 2013?  
01:58PM 19 A. 20TH, YEAH.  
01:58PM 20 Q. OKAY. ON NOVEMBER 20TH?  
01:58PM 21 A. YES, SIR.  
01:58PM 22 Q. OF 2013?  
01:58PM 23 A. YES.  
01:58PM 24 MR. COOPERSMITH: OKAY. YOUR HONOR, WE OFFER 20302.  
01:58PM 25 MR. BOSTIC: NO OBJECTION.

01:58PM 1 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

01:58PM 2 (DEFENDANT'S EXHIBIT 20302 WAS RECEIVED IN EVIDENCE.)

01:58PM 3 BY MR. COOPERSMITH:

01:58PM 4 Q. SO THIS IS NOT A VALIDATION REPORT, THIS IS ACTUALLY THE

01:58PM 5 ACTUAL PROCEDURE FOR RUNNING POTASSIUM; RIGHT?

01:58PM 6 A. YES.

01:58PM 7 Q. AND SO IN ADDITION TO THE VALIDATION REPORTS, THERE ALSO

01:58PM 8 HAS TO BE A PROCEDURE FOR HOW THE LAB PERSONNEL HAVE TO

01:58PM 9 ACTUALLY GO ABOUT RUNNING THE TESTS; RIGHT?

01:59PM 10 A. CORRECT.

01:59PM 11 Q. AND THEY'RE SUPPOSED TO FOLLOW THAT OPERATING PROCEDURE;

01:59PM 12 RIGHT?

01:59PM 13 A. CORRECT.

01:59PM 14 Q. AND THAT'S SO THEY DON'T MAKE MISTAKES; RIGHT?

01:59PM 15 A. CORRECT.

01:59PM 16 Q. BUT SOMETIMES THEY DO?

01:59PM 17 A. YES.

01:59PM 18 Q. AND THERE ARE A VARIETY OF MISTAKES THAT COULD BE MADE;

01:59PM 19 RIGHT?

01:59PM 20 A. SURE.

01:59PM 21 Q. AND SO WITH REGARD TO POTASSIUM, THERE IS WHAT IS CALLED

01:59PM 22 PREANALYTIC MISTAKES, OR ERRORS; RIGHT?

01:59PM 23 A. YES.

01:59PM 24 Q. AND THE PREANALYTIC ERRORS ARE BEFORE THE SAMPLE EVEN GETS

01:59PM 25 TO THE LAB TO TEST; RIGHT?

01:59PM 1 A. SO THIS SOP WOULD NOT COVER THE PREANALYTIC PROCEDURES  
01:59PM 2 SUCH AS THE BLOOD COLLECTION ITSELF.  
01:59PM 3 Q. RIGHT. BUT -- THANK YOU.  
01:59PM 4 BUT APART FROM THE PROCEDURE THEN, THERE IS SOMETHING  
01:59PM 5 KNOWN AS PREANALYTIC ERROR?  
01:59PM 6 A. YES.  
01:59PM 7 Q. AND THAT COULD INVOLVE SOMETHING LIKE THE METHOD OF BLOOD  
01:59PM 8 COLLECTION; RIGHT?  
01:59PM 9 A. CORRECT.  
01:59PM 10 Q. SO WHEN BLOOD IS COLLECTED, THERE COULD BE A PROBLEM WITH  
01:59PM 11 THE WAY THAT THE SAMPLE IS COLLECTED; RIGHT?  
01:59PM 12 A. CORRECT.  
01:59PM 13 Q. AND THAT WOULDN'T NECESSARILY BE A PROBLEM WITH THE  
02:00PM 14 TECHNOLOGY, IT MIGHT BE A PROBLEM WITH THE WAY THAT THE PERSON  
02:00PM 15 WHO COLLECTED THE SAMPLE WENT ABOUT DOING THAT; RIGHT?  
02:00PM 16 A. YES. IT COULD ALSO BE THE FUNCTIONING OF THE CTN.  
02:00PM 17 Q. A VARIETY OF THINGS?  
02:00PM 18 A. A VARIETY OF THINGS, YEAH.  
02:00PM 19 Q. AND ONE THING THAT COULD HAPPEN WITH REGARD TO POTASSIUM  
02:00PM 20 IN PARTICULAR IS SOMETHING CALLED HEMOLYSIS?  
02:00PM 21 A. CORRECT.  
02:00PM 22 Q. AND THAT WOULD BE WHERE THE ACTUAL PROCESS OF COLLECTING  
02:00PM 23 THE SAMPLE RESULTS IN RED BLOOD CELLS BASICALLY BURSTING?  
02:00PM 24 A. CORRECT.  
02:00PM 25 Q. AND THAT CREATES KIND OF ARTIFACTS THAT DON'T MAKE THE

02:00PM 1 TEST WORK AS DESIGNED; CORRECT?

02:00PM 2 A. CORRECT.

02:00PM 3 Q. AND THAT'S SOMETHING THAT HAPPENED AT THERANOS FROM TIME

02:00PM 4 TO TIME; RIGHT?

02:00PM 5 A. FREQUENTLY.

02:00PM 6 Q. AND THAT HAPPENS IN OTHER LABS, TOO?

02:00PM 7 A. YES.

02:00PM 8 Q. AND, IN FACT, ALL LABS MAKE ERRORS; RIGHT?

02:00PM 9 A. YES.

02:00PM 10 Q. AND IN YOUR EXPERIENCE WORKING AS OTHER LABS, INCLUDING

02:00PM 11 THE UNIVERSITY OF PITTSBURGH, WHICH I KNOW YOU DISCUSSED ON

02:00PM 12 DIRECT, THERE WERE ERRORS THAT WERE OCCASIONALLY MADE; RIGHT?

02:01PM 13 A. YES.

02:01PM 14 Q. AND YOU DID YOUR BEST TO CORRECT THEM?

02:01PM 15 A. YES.

02:01PM 16 Q. OKAY. LET'S GO TO THE NEXT EXHIBIT, WHICH IS 9315.

02:01PM 17 AND 9315 I THINK SHOULD ALREADY BE IN EVIDENCE UNDER THE

02:01PM 18 STIPULATION.

02:01PM 19 DO YOU SEE THAT IN FRONT OF YOU, DR. ROSENDORFF?

02:01PM 20 A. YES.

02:01PM 21 Q. AND THIS IS THE VALIDATION OF MODIFIED SIEMENS POTASSIUM

02:01PM 22 ASSAY; RIGHT?

02:01PM 23 A. YES.

02:01PM 24 Q. AND SO THIS WAS POTASSIUM RUNNING ON ONE OF THOSE MODIFIED

02:01PM 25 PREDICATE DEVICES; RIGHT?

02:01PM 1 A. YES.

02:01PM 2 Q. AND YOU SIGNED THE DOCUMENT ON MARCH 24TH OF 2014?

02:01PM 3 A. YES.

02:01PM 4 Q. AND THIS IS ACTUALLY THE VALIDATION REPORT; RIGHT?

02:02PM 5 A. YES.

02:02PM 6 Q. OKAY. AND YOU SIGNED THAT BECAUSE AT THE TIME YOU WERE

02:02PM 7 SATISFIED THAT THE ASSAY WAS APPROPRIATE FOR CLINICAL USE?

02:02PM 8 A. YES.

02:02PM 9 Q. LET'S GO TO EXHIBIT 4037.

02:02PM 10 EXHIBIT 4037, DO YOU SEE IT'S AN EMAIL STRING INCLUDING

02:02PM 11 YOURSELF AND A VARIETY OF OTHER PEOPLE AT THERANOS; IS THAT

02:03PM 12 RIGHT?

02:03PM 13 A. YES.

02:03PM 14 Q. AND IT'S FROM MID-NOVEMBER, '13?

02:03PM 15 A. YES.

02:03PM 16 Q. AND IT'S ABOUT, IT'S ABOUT SOME DEMOS; IS THAT RIGHT?

02:03PM 17 A. IT'S FROM DAN EDLIN, YES, IT'S ABOUT DEMOS.

02:03PM 18 Q. OKAY. AND THIS IS.

02:03PM 19 YOUR HONOR, WE MOVE 4037 INTO EVIDENCE.

02:03PM 20 THE COURT: 4037.

02:03PM 21 MR. COOPERSMITH: 4037.

02:03PM 22 MR. BOSTIC: NO OBJECTION.

02:03PM 23 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

02:03PM 24 (GOVERNMENT'S EXHIBIT 4037 WAS RECEIVED IN EVIDENCE.)

02:03PM 25 BY MR. COOPERSMITH:

02:03PM 1 Q. IF YOU GO TO THE EMAIL THAT IS EARLIEST IN TIME, THAT'S  
02:03PM 2 NOVEMBER 15TH, FROM MR. EDLIN?  
02:03PM 3 A. YES.  
02:03PM 4 Q. AND HE SAYS, "HI ALL,  
02:03PM 5 "THIS AFTERNOON AT 3:30 P.M. WE WILL HAVE TWO PATIENTS AT  
02:03PM 6 WAG FOR A FINGERSTICK. THESE ARE DEMO PATIENTS, BUT THE  
02:04PM 7 COLLECTION WILL TAKE PLACE AT WAG."  
02:04PM 8 RIGHT?  
02:04PM 9 A. YES.  
02:04PM 10 Q. AND SO EVEN THOUGH THIS WAS A DEMONSTRATION, THE  
02:04PM 11 COLLECTION IN THIS CASE WOULD TAKE PLACE AT A WALGREENS STORE?  
02:04PM 12 A. YES.  
02:04PM 13 Q. THAT'S WHAT WAG IS?  
02:04PM 14 A. YES.  
02:04PM 15 Q. WHEN YOU TALK ABOUT ISE ASSAYS, WHAT ARE THE ISE ASSAYS?  
02:04PM 16 A. SODIUM, POTASSIUM, AND CHLORIDE.  
02:04PM 17 Q. SO POTASSIUM IS ONE OF THE ISE ASSAYS?  
02:04PM 18 A. YES.  
02:04PM 19 Q. OKAY. AND IF YOU GO TO SORT OF THE MIDDLE EMAIL ON PAGE 2  
02:04PM 20 OF THE EXHIBIT, THAT SAYS, "DANIEL, THE RESULTS FOR THE WAG  
02:04PM 21 DEMO ARE ATTACHED. THE ISE ASSAYS WERE RUN WITH A 1:1  
02:04PM 22 DILUTION, AND THE DILUTION FACTOR WAS ENTERED IN THE ADVIA, SO  
02:04PM 23 IT CORRECTED FOR THE DILUTION."  
02:04PM 24 DO YOU SEE THAT?  
02:04PM 25 A. YES.

02:04PM 1 Q. AND SO WE'RE TALKING ABOUT, IN THIS EMAIL, ISE ASSAYS THAT  
02:05PM 2 WERE RUN AS A DEMO; RIGHT?  
02:05PM 3 A. YES.  
02:05PM 4 Q. AND THEN IF YOU GO TO THE NEXT PAGE, THERE'S AN EMAIL ON  
02:05PM 5 THE FIRST PAGE ON THE VERY BOTTOM FROM SOMEONE NAMED LINDA LY.  
02:05PM 6 DO YOU SEE THAT?  
02:05PM 7 A. YES.  
02:05PM 8 Q. AND MS. LY WRITES TO A GROUP OF PEOPLE "UNLESS EREZ NEEDS  
02:05PM 9 TO CORRECT USING THE MQ'S WHICH WERE RUN WITH THE SAMPLE AND  
02:05PM 10 ALSO DILUTED 1:1 (SHOULD BE INCLUDED IN THE ASSAY RESULT DATA  
02:05PM 11 FILE FOR THE ISE'S). IS THERE NO CORRECTION FOR THAT?  
02:05PM 12 DO YOU SEE THAT?  
02:05PM 13 A. YES.  
02:05PM 14 Q. AND THEN ANOTHER THERANOS PERSON NAMED SARAH CABAYAN.  
02:05PM 15 DO YOU SEE THAT?  
02:05PM 16 A. YES.  
02:05PM 17 Q. SHE SAYS, "I DON'T KNOW IF ANYBODY HAS EXPLAINED WHERE  
02:05PM 18 THIS CORRECTION COMES FROM, I DON'T THINK THE RESULTS SHOULD BE  
02:05PM 19 ADJUSTED."  
02:05PM 20 RIGHT?  
02:05PM 21 A. YES, I SEE THAT.  
02:05PM 22 Q. AND THAT WAS MS. CABAYAN'S OPINION; RIGHT?  
02:06PM 23 A. YES.  
02:06PM 24 Q. AND SHE WAS A LAB ASSOCIATE?  
02:06PM 25 A. SHE WAS A CLS.

02:06PM 1 Q. ONE OF THE CLS'S?

02:06PM 2 A. YEAH.

02:06PM 3 Q. AND THAT WAS THE VIEW THAT SHE EXPRESSED; RIGHT?

02:06PM 4 A. YES.

02:06PM 5 Q. AND IN THE NEXT EMAIL, JUST ABOUT FOUR MINUTES LATER, FROM

02:06PM 6 DANIEL YOUNG SAYS, "OK TO RELEASE FROM MY POINT OF VIEW."

02:06PM 7 A. YES.

02:06PM 8 Q. AND THEN A MINUTE LATER YOU WROTE, "APPROVED"; RIGHT?

02:06PM 9 A. YES.

02:06PM 10 Q. SO YOU DISAGREED WITH MS. CABAYAN?

02:06PM 11 A. I THINK WHAT I WAS APPROVING WERE THE RESULTS. I DON'T

02:06PM 12 KNOW IF I WAS EXPRESSLY TALKING ABOUT BIAS -- WHAT WAS IT

02:06PM 13 CALLED? THE CORRECTION?

02:06PM 14 Q. IT DOESN'T EXPLAIN IT. IT JUST SAYS CORRECTION,

02:06PM 15 DR. ROSENDORFF.

02:06PM 16 SO APPARENTLY MS. CABAYAN HAD A VIEW THAT SHE DIDN'T THINK

02:06PM 17 THE RESULTS SHOULD BE ADJUSTED.

02:06PM 18 DO YOU SEE THAT?

02:06PM 19 A. YES.

02:06PM 20 Q. AND DANIEL YOUNG, NOTWITHSTANDING THAT, HE SAYS FOUR

02:07PM 21 MINUTES LATER, "OK TO RELEASE FROM MY POINT OF VIEW."

02:07PM 22 RIGHT?

02:07PM 23 A. I DON'T KNOW IF THE RESULTS WERE CORRECTED OR NOT --

02:07PM 24 Q. DR. ROSENDORFF, IN ANY EVENT, WITHIN A SPAN OF ABOUT FIVE

02:07PM 25 MINUTES, MS. CABAYAN EXPRESSED HER VIEW?

02:07PM 1 A. YES.

02:07PM 2 Q. AND DANIEL YOUNG SAID, "OK TO RELEASE"; RIGHT?

02:07PM 3 A. YES.

02:07PM 4 Q. AND THEN YOU SAID "APPROVED"?

02:07PM 5 A. YES.

02:07PM 6 Q. OKAY. AND MR. EDLIN AT THE VERY TOP, JUST TO CLOSE THE

02:07PM 7 LOOP, SAYS, "GREAT, THANKS"; RIGHT?

02:07PM 8 A. YES.

02:07PM 9 Q. ALL RIGHT.

02:08PM 10 LET'S TAKE A LOOK AT 20317.

02:08PM 11 OKAY. THIS IS AN EMAIL STRING FROM APRIL OF 2014?

02:08PM 12 A. YES.

02:08PM 13 Q. DO YOU SEE THAT?

02:08PM 14 AND IT'S RELATING TO A CERTAIN CTN THAT WAS COLLECTED?

02:08PM 15 A. YES.

02:08PM 16 Q. AND AT THE TOP OF THE EMAIL IT'S FROM HODA ALAMDAR TO

02:08PM 17 YOURSELF AND OTHERS?

02:08PM 18 A. YES.

02:08PM 19 Q. OKAY.

02:08PM 20 YOUR HONOR, WE OFFER 20317.

02:08PM 21 MR. BOSTIC: NO OBJECTION.

02:08PM 22 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

02:08PM 23 (DEFENDANT'S EXHIBIT 20317 WAS RECEIVED IN EVIDENCE.)

02:08PM 24 BY MR. COOPERSMITH:

02:08PM 25 Q. OKAY. JUST TO ORIENT OURSELVES, GOING TO THE EARLIEST

02:08PM 1 EMAIL IN TIME, THERE'S AN EMAIL FROM TINA LIN ON PAGE 5 AND SHE  
02:09PM 2 WRITES TO MS. ALAMDAR AND OTHERS, "NO, LET ME GO ADD A NOTE ON  
02:09PM 3 ALL OF THE ISE'S TONIGHT. THEY ARE NOT YET READY FOR CLIA  
02:09PM 4 REVIEW."  
02:09PM 5 DO YOU SEE THAT?  
02:09PM 6 A. YES.  
02:09PM 7 Q. OKAY. AND THEN IF YOU GO TO PAGE 2 OF THE DOCUMENT,  
02:09PM 8 THERE'S AN EMAIL FROM TINA LIN TO A GROUP OF PEOPLE, INCLUDING  
02:09PM 9 YOURSELF.  
02:09PM 10 DO YOU SEE THAT?  
02:09PM 11 A. YES.  
02:09PM 12 Q. AND IT SAYS "HI HODA,  
02:09PM 13 "THE RERUN RESULTS WERE NOT GOOD. WE WILL HAVE TO GO WITH  
02:09PM 14 THE RESULTS FROM LAST NIGHT. NOTE THAT THERE WAS NOT ENOUGH  
02:09PM 15 SAMPLE TO RERUN 19016."  
02:09PM 16 DO YOU SEE THAT?  
02:09PM 17 A. YES.  
02:09PM 18 Q. AND THE NEXT EMAIL WAS FROM MS. ALAMDAR AGAIN.  
02:09PM 19 SHE WRITES, "HI ADAM,  
02:09PM 20 "JUST TO CONFIRM, WE CAN RELEASE ALL ISE'S INCLUDING THE  
02:09PM 21 CRITICAL RESULTS FOR 52136, FOR K," THAT'S POTASSIUM?  
02:09PM 22 A. YES.  
02:09PM 23 Q. "SEE BELOW EMAIL FROM TINA"; RIGHT?  
02:10PM 24 A. YES.  
02:10PM 25 Q. SO THAT WAS AN EMAIL DIRECTLY TO YOU; RIGHT?

02:10PM 1 A. YES.

02:10PM 2 Q. AND THEN YOU RESPONDED ON APRIL 23RD AT 4:57 P.M.?

02:10PM 3 A. YES.

02:10PM 4 Q. "HODA, PLEASE MEASURE THE LDH ON CTN WITH THE K OF 7.4"?

02:10PM 5 A. YES.

02:10PM 6 Q. AND YOU'RE GIVING HER SPECIFIC INSTRUCTIONS?

02:10PM 7 A. YES.

02:10PM 8 Q. AND BY THE WAY, MR. BALWANI IS NOT ON THE EMAIL; RIGHT?

02:10PM 9 A. YES.

02:10PM 10 Q. AND THEN YOU RESPOND AGAIN AT 5:21 P.M., "HODA, I'M

02:10PM 11 ASSUMING YOU HAVE CONFIRMED WITH TINA LIN AND DANIEL YOUNG THAT

02:10PM 12 THE CTN WAS NOT COMPROMISED IN ANY WAY. IF THIS IS THE CASE,

02:10PM 13 THEN PLEASE CALL IT CRITICAL FOR THIS PATIENT."

02:10PM 14 RIGHT?

02:10PM 15 A. YES.

02:10PM 16 Q. AND COMPROMISED MEANS IT COULD BE THAT HEMOLYSIS ISSUE

02:10PM 17 THAT WE TALKED ABOUT BEFORE; RIGHT?

02:10PM 18 A. YEAH, AND IF THE HDL IS VERY HIGH, IT WOULD INDICATE

02:10PM 19 HEMOLYSIS AS WELL.

02:10PM 20 Q. RIGHT. SO YOU WERE ASKING HER TO CHECK FOR THAT?

02:10PM 21 A. YES.

02:10PM 22 Q. AND SHE REPORTED, "HI ADAM,

02:10PM 23 "I LOOKED AT THE CTN IMAGE FOR 19016. THE CTN IS NOT

02:11PM 24 HEMOLYZED. WE ARE GOING TO RELEASE ALL OF THE ISE'S INCLUDING

02:11PM 25 THE CRITICAL K"; RIGHT?

02:11PM 1 A. YES.

02:11PM 2 Q. AND THIS WAS AN INSTANCE WHERE YOU AGREED TO RELEASE A

02:11PM 3 CRITICAL POTASSIUM AFTER YOU WERE SATISFIED THAT IT WASN'T

02:11PM 4 HEMOLYZED AND EVERYTHING ELSE CHECKED OUT?

02:11PM 5 A. HEMOLYZED, YES.

02:11PM 6 Q. HEMOLYZED. THANK YOU.

02:12PM 7 LET'S GO TO 20316.

02:12PM 8 20316, DR. ROSENDORFF, IS AN EMAIL STRING AMONG YOURSELF

02:12PM 9 AND OTHER LAB PERSONNEL AT THERANOS?

02:12PM 10 A. YES.

02:12PM 11 Q. AND IT RELATES TO GENERAL CHEMISTRY RESULTS?

02:12PM 12 A. YES.

02:12PM 13 Q. AND IT'S APRIL 2014; IS THAT RIGHT?

02:12PM 14 A. YES.

02:12PM 15 Q. AND, YOUR HONOR, WE OFFER 20316.

02:12PM 16 MR. BOSTIC: NO OBJECTION.

02:12PM 17 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

02:12PM 18 (DEFENDANT'S EXHIBIT 20316 WAS RECEIVED IN EVIDENCE.)

02:12PM 19 BY MR. COOPERSMITH:

02:12PM 20 Q. LET'S GO TO THE EARLIEST EMAIL IN TIME, AND THIS IS FROM

02:12PM 21 ELLEN SANG.

02:12PM 22 DO YOU SEE THAT?

02:12PM 23 A. YES.

02:12PM 24 Q. AND IT SAYS "HI GUYS,

02:12PM 25 "MORE GC RESULTS HAS BEEN UPLOADED TO LIS."

02:12PM 1 DO YOU SEE THAT?

02:12PM 2 A. YES.

02:12PM 3 Q. AND IT SAYS, "PLEASE NOTE THAT CTN 7720 IS SHORT VOLUME

02:12PM 4 AND WE HAD TO HAND DILUTE ISE AND RAN MULTIQUALS ON EVOWARE."

02:12PM 5 DO YOU SEE THAT?

02:12PM 6 A. YES.

02:12PM 7 Q. AND SO THAT'S AN INITIAL TOPIC.

02:13PM 8 BUT THEN IF YOU GO TO THE EMAIL ON PAGE 1 FROM

02:13PM 9 STELLA HOWARD, THAT'S TO YOU WITH A COPY TO MS. ALAMDAR.

02:13PM 10 DO YOU SEE THAT?

02:13PM 11 A. YES.

02:13PM 12 Q. SHE SAYS, "ADAM,

02:13PM 13 "SHOULD I RELEASE THE 5.8 POTASSIUM RESULT WITH A NOTE

02:13PM 14 SAYING STATING THAT IT'S HEMOLYZED THEN...? I'M SORRY, I GUESS

02:13PM 15 I AM NOT UNDERSTANDING THE ACCEPTABLE WORKFLOW FROM ISE'S THAT

02:13PM 16 ARE COMING OUT LOW/HIGH."

02:13PM 17 A. YES.

02:13PM 18 Q. AND THEN SHE GOES ON, "SO IN THE FUTURE WE WILL RELEASE

02:13PM 19 RESULTS IF THEY ARE READY FOR CLIA REVIEW, WITHOUT CHECKING

02:13PM 20 WITH YOU ADAM, REGARDLESS IF THEY ARE LOW/HIGH. WE SHOULD ONLY

02:13PM 21 CHECK WITH YOU IF THEY ARE CRITICAL."

02:13PM 22 THAT'S WHAT SHE IS STATING AND ASKING YOU TO GIVE HER SOME

02:13PM 23 GUIDANCE; RIGHT?

02:13PM 24 A. YES.

02:13PM 25 Q. AND THEN YOU DID ON THE EMAIL AT THE TOP. YOU RESPONDED

02:13PM 1 AND YOU WROTE, "HI STELLA,

02:13PM 2 "IF THE SAMPLE APPEARS HEMOLYZED TO THE CLS, THEN IT IS

02:14PM 3 THE CLS DISCRETION TO ACCEPT THE RESULTS, USING THE HEMOLYSIS

02:14PM 4 VISUAL CHART IN NORMANDY, SINCE WE DON'T HAVE AN AUTOMATED

02:14PM 5 HEMOLYSIS METHOD YET."

02:14PM 6 DO YOU SEE THAT?

02:14PM 7 A. YES.

02:14PM 8 Q. AND THEN YOU SAY, "IN SUMMARY, THE RESULTS CAN BE RELEASED

02:14PM 9 WHEN R&D SIGNS OFF ON THE CTN."

02:14PM 10 THAT'S ONE WAY RESULTS CAN BE RELEASED; RIGHT?

02:14PM 11 A. YES.

02:14PM 12 Q. OR TWO, "CLS SIGNS OFF THAT THE CTN WAS NOT HEMOLYZED."

02:14PM 13 A. YES.

02:14PM 14 Q. OR THREE, "ISE'S ARE NOT CRITICAL."

02:14PM 15 RIGHT?

02:14PM 16 A. YES.

02:14PM 17 Q. SO THIS IS A POLICY YOU'RE PUTTING IN PLACE?

02:14PM 18 A. YES.

02:14PM 19 Q. AND YOU SAY, "RESULTS SHOULD COME TO ME," AS LAB DIRECTOR

02:14PM 20 I GUESS, "AND WHEN CRITICAL, OR SOME OTHER QUESTION THAT IS NOT

02:14PM 21 COVERED IN THESE POINTS."

02:14PM 22 SO YOU WANTED TO REVIEW THE CRITICAL RESULTS; RIGHT?

02:14PM 23 A. YES.

02:14PM 24 Q. BECAUSE THAT'S IMPORTANT; RIGHT? IF YOU'RE GOING TO REACH

02:14PM 25 A CRITICAL RESULT, BEFORE YOU TELL A PATIENT YOU HAVE CRITICAL

02:14PM 1 POTASSIUM OR ANYTHING, YOU WOULD WANT TO MAKE SURE AS BEST YOU  
02:15PM 2 COULD THAT THAT WAS CORRECT; RIGHT?  
02:15PM 3 A. YES.  
02:15PM 4 Q. NOW, YOU UNDERSTAND, AND I THINK YOU TESTIFIED, THAT THERE  
02:15PM 5 WERE ISSUES THAT WERE OF SOME CONCERN TO YOU ABOUT POTASSIUM;  
02:15PM 6 RIGHT?  
02:15PM 7 A. YES.  
02:15PM 8 Q. AND THAT -- BUT THE COMPANY DIDN'T JUST THROW UP ITS HANDS  
02:15PM 9 AND RELEASE THE RESULTS ANYWAY, THEY ACTUALLY TRIED TO WORK ON  
02:15PM 10 THE PROBLEM; RIGHT?  
02:15PM 11 A. THEY DID.  
02:15PM 12 Q. AND LET'S TAKE A LOOK AT 13893.  
02:15PM 13 13893 YOU SEE IS AN EMAIL STRING AMONG YOU, MR. BALWANI,  
02:16PM 14 AND OTHERS FROM MAY OF 2014?  
02:16PM 15 A. YES.  
02:16PM 16 MR. COOPERSMITH: YOUR HONOR, WE OFFER 13893.  
02:16PM 17 MR. BOSTIC: NO OBJECTION.  
02:16PM 18 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.  
02:16PM 19 (DEFENDANT'S EXHIBIT 13893 WAS RECEIVED IN EVIDENCE.)  
02:16PM 20 BY MR. COOPERSMITH:  
02:16PM 21 Q. OKAY. LET'S LOOK AT THE EARLIEST EMAIL IN TIME, AND  
02:16PM 22 THAT'S AN EMAIL FROM DANIEL YOUNG; RIGHT?  
02:16PM 23 A. YES.  
02:16PM 24 Q. AND IT'S RELATING TO ISE STUDIES?  
02:16PM 25 A. YES.

02:16PM 1 Q. WHICH, AS WE DISCUSSED, INCLUDES POTASSIUM?

02:16PM 2 A. YES.

02:16PM 3 Q. AND IT SAYS, "I WANTED TO UPDATE YOU ON THE ISE STUDIES IN

02:16PM 4 PREPARATION FOR SWITCHING BACK TO THE DILUTED ISE PROTOCOLS ON

02:16PM 5 TUESDAY."

02:16PM 6 DO YOU SEE THAT?

02:16PM 7 A. YES.

02:16PM 8 Q. AND DR. YOUNG WRITES, "WITH OUR NEW APPROACH, WE HAVE NOW

02:16PM 9 SHOWN THAT WE CAN PROCESS AND RUN ISE'S WITH DILUTED VENOUS

02:16PM 10 SAMPLES WITH GREAT ACCURACY AND PRECISION (SHOWN NOW OVER

02:16PM 11 10 DAYS AND 48 SUBJECTS)."

02:17PM 12 DO YOU SEE THAT?

02:17PM 13 A. YES.

02:17PM 14 Q. AND THAT WAS WHAT DR. YOUNG WAS WRITING?

02:17PM 15 A. YES.

02:17PM 16 Q. AND MR. BALWANI WROTE BACK ON MAY 24TH, 12:03 P.M. HE

02:17PM 17 WRITES, "DANIEL,

02:17PM 18 "THIS IS TRULY GREAT PROGRESS AND A BIG COMPETITIVE

02:17PM 19 ADVANTAGE FOR US.

02:17PM 20 "WE NEED TO KEEP THIS PROJECT, THE CODE, CALIBRATION, AND

02:17PM 21 EVERYTHING WE LEARNED HERE AS THERANOS TRADE SECRET. EVERYONE

02:17PM 22 WHO WAS WORKING ON THIS NEEDS TO UNDERSTAND THIS. THIS ALSO

02:17PM 23 SHOULD NOT BE COMMUNICATED TO ANYONE IN CLIA WHO DOESN'T NEED

02:17PM 24 TO KNOW HOW WE DO THIS CALIBRATION AND HOW WE GOT WHERE WE ARE

02:17PM 25 ON THIS PROJECT. BESIDES ADAM, NO ONE IN CLIA NEEDS TO KNOW

02:17PM 1 ABOUT OUR SECRET SAUCE AND IF ADAM THINKS ANYONE ELSE NEEDS TO  
02:17PM 2 KNOW THIS THEN WE NEED TO GET THEM UNDER SAME AGREEMENT AROUND  
02:17PM 3 OUR TRADE SECRET. THERE IS NO ONE ON THE INDUSTRY CAPABLE OF  
02:17PM 4 DOING WHAT WE HAVE ACCOMPLISHED HERE BECAUSE OF THE MASSIVE  
02:17PM 5 LEARNINGS AND TRIAL AND ERRORS. WE NEED TO PROTECT THIS."  
02:17PM 6 DO YOU SEE THAT?  
02:17PM 7 A. YES.  
02:17PM 8 Q. OKAY. AND IN RESPONSE TO MR. BALWANI, DANIEL YOUNG WROTE,  
02:17PM 9 "SOUNDS GOOD. I WILL GET TOGETHER WITH MONA AND DRAFT THE  
02:18PM 10 STRATEGY."  
02:18PM 11 RIGHT?  
02:18PM 12 A. YES.  
02:18PM 13 Q. AND MONA WAS A HUMAN RESOURCES PERSON?  
02:18PM 14 A. YEAH, SHE WAS A LAWYER, HR, HEAD OF HR THERE.  
02:18PM 15 Q. AND SHE WAS A LAWYER AND ALSO THE HEAD OF HR?  
02:18PM 16 A. CORRECT.  
02:18PM 17 Q. AND THEN ABOVE THAT IS AN EMAIL FROM YOU TO DR. YOUNG  
02:18PM 18 COPYING MR. BALWANI, MS. HOLMES, AND MONA RAMAMURTHY.  
02:18PM 19 AND YOU SAY "DANIEL,  
02:18PM 20 "CONGRATULATIONS ON CRACKING THIS.  
02:18PM 21 "REGARDS,  
02:18PM 22 "ADAM."  
02:18PM 23 RIGHT?  
02:18PM 24 A. YES.  
02:18PM 25 Q. AND THAT'S WITH RESPECT TO THE ISE'S?

02:18PM 1 A. YES.

02:18PM 2 Q. NOW, AFTER THAT, THOUGH, THERE WERE STILL SOME ISSUES THAT

02:18PM 3 SURFACED EVEN THOUGH AT THE TIME DR. YOUNG AND OTHERS HAD

02:18PM 4 THOUGHT THEY HAD SOLVED ALL OF THE PROBLEMS; RIGHT?

02:18PM 5 A. CORRECT.

02:18PM 6 Q. AND LET'S GO TO EXHIBIT 20342.

02:19PM 7 THIS IS AN EMAIL STRING FROM OCTOBER -- I'M SORRY.

02:19PM 8 PUTTING ASIDE THE TOP EMAIL, THERE'S AN EMAIL FROM JUNE OF

02:19PM 9 '14, AN EMAIL STRING; RIGHT?

02:19PM 10 A. YES.

02:19PM 11 Q. AND THIS RELATES TO PATIENT RESULTS SINCE MAY 24TH FOR

02:19PM 12 POTASSIUM?

02:19PM 13 A. YES.

02:19PM 14 Q. AND WHAT YOU AND OTHERS WERE SEEING WAS THAT SOME OF THE

02:19PM 15 POTASSIUMS WERE FLAGGING HIGH OR LOW; RIGHT?

02:20PM 16 LET ME WITHDRAW THAT AND ASK A BETTER QUESTION.

02:20PM 17 YOU WERE SEEING SOME RESULTS THAT YOU THOUGHT IT WAS

02:20PM 18 IMPORTANT TO RAISE BECAUSE YOU WERE STILL SEEING SOME ISSUES

02:20PM 19 EVEN AFTER THE EMAIL THAT WE PREVIOUSLY SAW; RIGHT?

02:20PM 20 A. YES.

02:20PM 21 Q. OKAY. AND ON -- IF YOU LOOK AT -- WELL, LET ME JUST SEE

02:20PM 22 IF I CAN DO THIS FIRST.

02:20PM 23 CAN WE, YOUR HONOR -- YOUR HONOR, WE OFFER 20342.

02:20PM 24 MR. BOSTIC: NO OBJECTION.

02:20PM 25 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

02:20PM 1 (DEFENDANT'S EXHIBIT 20342 WAS RECEIVED IN EVIDENCE.)

02:20PM 2 BY MR. COOPERSMITH:

02:20PM 3 Q. OKAY. AND I WANTED TO SHOW YOU THE EMAIL THAT STARTS ON

02:20PM 4 THE BOTTOM OF PAGE 1. THIS IS ON JUNE 28TH, 2014.

02:20PM 5 DO YOU SEE THAT?

02:20PM 6 A. YES.

02:20PM 7 Q. DR. YOUNG WRITES, "I WANTED TO PROVIDE A BRIEF UPDATE ON

02:20PM 8 OUR REVIEW OF POTASSIUM DATA AND OUR REFINED FOCUS TO ADDRESS

02:21PM 9 THAT."

02:21PM 10 DO YOU SEE THAT?

02:21PM 11 A. YES.

02:21PM 12 Q. AND HE SAYS, "FIRST, I WAS NOTICING THAT OUR POTASSIUM

02:21PM 13 DATA FROM OUR IN-HOUSE SAMPLES HAS LESS ISSUES THAN OUR WAG

02:21PM 14 POTASSIUM SAMPLES."

02:21PM 15 SO HE DID SOME ANALYSIS, AND HERE'S A SUMMARY; RIGHT?

02:21PM 16 A. YES.

02:21PM 17 Q. AND THEN THERE'S A SUMMARY CHART THAT INDICATES WHAT HE'S

02:21PM 18 TALKING ABOUT; RIGHT?

02:21PM 19 A. YES.

02:21PM 20 Q. AND THEN HE SAYS, "AS THIS SHOWS, SAMPLES FROM PHOENIX ARE

02:21PM 21 SHOWING HIGHER POTASSIUM RESULTS THAN WAG SAMPLES FROM

02:21PM 22 PALO ALTO AND SAMPLES COLLECTED IN-HOUSE."

02:21PM 23 DO YOU SEE THAT?

02:21PM 24 A. YES.

02:21PM 25 Q. AND HE SAYS, "I BELIEVE THIS IS LIKELY DUE TO THREE

02:21PM 1 COMBINED EFFECTS."

02:21PM 2 AND THE FIRST IS "SAMPLE STORAGE TIME."

02:21PM 3 DO YOU SEE THAT?

02:21PM 4 A. YES.

02:21PM 5 Q. AND THE SECOND IS "IN FIELD AND NORMANDY SAMPLE PROCESSING

02:21PM 6 PROCEDURES (NAMELY, CENTRIFUGE PROCEDURES) ."

02:21PM 7 DO YOU SEE THAT?

02:21PM 8 A. YES.

02:21PM 9 Q. AND THEN THREE, "POSSIBLE SAMPLE COLLECTION TECHNIQUE

02:21PM 10 DIFFERENCES."

02:21PM 11 DO YOU SEE THAT?

02:21PM 12 A. YES.

02:21PM 13 Q. AND THEN HE SAYS, "WE HAVE PLANNED A STUDY TO UNDERSTAND

02:22PM 14 THESE FACTORS."

02:22PM 15 A. YES.

02:22PM 16 Q. AND THEN MR. BALWANI RESPONDS ON JUNE 28TH AND SAYS, "I

02:22PM 17 AGREE WITH THIS BUT WOULD LIKE TO MOVE RAPIDLY SO WE CAN HAVE

02:22PM 18 THE RIGHT PERFECT SOLUTION IN PLACE ASAP."

02:22PM 19 RIGHT?

02:22PM 20 A. YES.

02:22PM 21 Q. AND THEN DR. YOUNG REPORTS ON JUNE 28TH AT 3:46 P.M.

02:22PM 22 "INITIAL STUDY WAS RUN AND ANALYZED TODAY -- SHOWING

02:22PM 23 IMPROVEMENTS AND SUPPORTS HYPOTHESIS."

02:22PM 24 RIGHT?

02:22PM 25 A. YES.

02:22PM 1 Q. AND THEN HE SAYS, "WE ARE INITIATING MORE EXTENSIVE STUDY  
02:22PM 2 ACROSS TWO DAYS."

02:22PM 3 DO YOU SEE THAT?

02:22PM 4 A. YES.

02:22PM 5 Q. AND HE SAYS, "THE GOAL OF THE STUDY IS TO ESTABLISH AND  
02:22PM 6 DEMONSTRATE OPTIMAL PROCEDURES FOR SAMPLE PROCESSING TO ENSURE  
02:22PM 7 RELIABLE TEST RESULTS."

02:22PM 8 A. MY SCREEN JUST WENT BLANK. I THINK IT'S REBOOTING.

02:22PM 9 Q. OKAY. DO YOU HAVE IT ON THE SCREEN?

02:22PM 10 A. NO.

02:22PM 11 Q. OKAY.

02:22PM 12 THE COURT: IS IT ON THE JUROR'S SCREEN?

02:22PM 13 YES.

02:22PM 14 MR. COOPERSMITH: I THINK WE CAN HAVE YOU PULL THE  
02:22PM 15 HARD COPY DOCUMENT.

02:23PM 16 THE WITNESS: IT SHOULD BE COMING UP.

02:23PM 17 OH, THERE IT IS.

02:23PM 18 BY MR. COOPERSMITH:

02:23PM 19 Q. I'M JUST POINTING YOU TO THE EMAIL. I DON'T NEED TO READ  
02:23PM 20 IT AGAIN.

02:23PM 21 BUT DO YOU SEE DANIEL RESPONDED?

02:23PM 22 A. YES.

02:23PM 23 Q. OKAY. LET'S TAKE A LOOK, DR. ROSENDORFF, AT  
02:24PM 24 EXHIBIT 20431.

02:24PM 25 THIS IS ANOTHER EMAIL STRING AMONG YOU AND MR. BALWANI AND

02:24PM 1 DANIEL YOUNG.

02:24PM 2 DO YOU SEE THAT?

02:24PM 3 A. YES.

02:24PM 4 Q. AND MS. HOLMES?

02:24PM 5 A. YES.

02:24PM 6 Q. OKAY. AND THIS ALSO RELATES TO POTASSIUM?

02:24PM 7 A. YES.

02:24PM 8 Q. AND IT'S FROM JULY OF 2014?

02:24PM 9 A. YES.

02:24PM 10 MR. COOPERSMITH: YOUR HONOR, WE OFFER 20431.

02:25PM 11 MR. BOSTIC: NO OBJECTION.

02:25PM 12 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

02:25PM 13 (DEFENDANT'S EXHIBIT 20431 WAS RECEIVED IN EVIDENCE.)

02:25PM 14 BY MR. COOPERSMITH:

02:25PM 15 Q. AND IN THIS EXHIBIT, IF YOU LOOK AT THE FIRST PAGE,

02:25PM 16 DR. YOUNG WRITES TO YOU, AND MR. BALWANI, AND MS. HOLMES,

02:25PM 17 POTASSIUM STATUS.

02:25PM 18 DO YOU SEE THAT?

02:25PM 19 A. YES.

02:25PM 20 Q. "IN PREPARATION FOR OUR DISCUSSION, I WANTED TO SEND OUT A

02:25PM 21 FEW UPDATES THAT WE CAN DISCUSS IN MORE DETAIL TOGETHER."

02:25PM 22 THERE'S A HEADING POTASSIUM ASSAY (P-PROTOCOL ON ADVIA)

02:25PM 23 RIGHT?

02:25PM 24 A. YES.

02:25PM 25 Q. HE WRITES, "DILUTED PROTOCOL VERSUS NEAT/PREDICATE

02:25PM 1 PROTOCOL CONTINUES TO PERFORM WELL."

02:25PM 2 DO YOU SEE THAT?

02:25PM 3 A. YES.

02:25PM 4 Q. "RUNNING FINGERSTICK SAMPLES NEAT COMPARE WELL TO RUNNING

02:25PM 5 FINGERSTICK SAMPLES DILUTED."

02:25PM 6 DO YOU SEE THAT?

02:25PM 7 A. YES.

02:25PM 8 Q. "RUNNING VENOUS SAMPLES DILUTED COMPARE WELL TO RUNNING

02:26PM 9 VENOUS SAMPLES NEAT."

02:26PM 10 RIGHT?

02:26PM 11 A. YES.

02:26PM 12 Q. THAT'S WHAT DR. YOUNG IS SAYING?

02:26PM 13 A. THAT'S WHAT HE'S SAYING.

02:26PM 14 Q. SO HE'S TRYING TO WORK ON THE ISSUES THAT WERE OF CONCERN;

02:26PM 15 IS THAT RIGHT?

02:26PM 16 A. YES.

02:26PM 17 Q. NOW, IF YOU GO BELOW THAT, DO YOU SEE AFTER THE CHART HE

02:26PM 18 WRITES, "BASED ON THIS, I DO NOT RECOMMEND ESTABLISHING A NEW

02:26PM 19 POTASSIUM REFERENCE RANGE AT THIS TIME FOR FINGERSTICK

02:26PM 20 SAMPLES."

02:26PM 21 DO YOU SEE THAT?

02:26PM 22 A. YES.

02:26PM 23 Q. AND THAT WAS A SUBJECT THAT YOU DISAGREED WITH DR. YOUNG

02:26PM 24 ABOUT; RIGHT?

02:26PM 25 A. YES.

02:26PM 1 Q. HE BELIEVED THAT THE REFERENCE RANGE SHOULD BE THE SAME  
02:26PM 2 FOR FINGERSTICK SAMPLES AND VENOUS SAMPLES; RIGHT?  
02:26PM 3 A. CORRECT.  
02:26PM 4 Q. AND YOU THOUGHT THAT THERE SHOULD BE A DIFFERENT REFERENCE  
02:26PM 5 RANGE?  
02:26PM 6 A. CORRECT.  
02:26PM 7 Q. AND SO IT WAS A SUBJECT THAT YOU AND DR. YOUNG DISAGREED  
02:26PM 8 WITH?  
02:26PM 9 A. CORRECT.  
02:26PM 10 Q. AND -- WELL, LET'S GO TO ANOTHER EXHIBIT, 20335.  
02:27PM 11 AND DO YOU SEE 20335 IS AN EMAIL WITH THE SUBJECT OF  
02:27PM 12 MEETING MINUTES?  
02:27PM 13 A. YES.  
02:27PM 14 Q. ABOUT CRITICAL REPORTING AND CTN RELEASING?  
02:27PM 15 A. YES.  
02:27PM 16 Q. AND THIS WAS FROM MONETTE ROCKEYMORE?  
02:27PM 17 A. YES.  
02:27PM 18 Q. AND SHE WAS ANOTHER EMPLOYEE WHO WORKED IN THE LAB?  
02:27PM 19 A. YES.  
02:27PM 20 Q. AND IT WAS TO YOU AND OTHERS ABOUT THIS SUBJECT OF  
02:28PM 21 CRITICAL REPORTING?  
02:28PM 22 A. YES.  
02:28PM 23 MR. COOPERSMITH: YOUR HONOR, WE OFFER 20335.  
02:28PM 24 MR. BOSTIC: NO OBJECTION.  
02:28PM 25 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

02:28PM 1 (DEFENDANT'S EXHIBIT 20335 WAS RECEIVED IN EVIDENCE.)

02:28PM 2 BY MR. COOPERSMITH:

02:28PM 3 Q. IT SAYS, "HI ADAM,

02:28PM 4 "PLEASE SEE ATTACHED FOR THE MINUTES OF THE MEETING. TO

02:28PM 5 MAKE IT MORE CONVENIENT FOR EVERYONE, I HAVE ALSO INCLUDED

02:28PM 6 SCREENSHOT OF THE DISCUSSION WE HAD TODAY."

02:28PM 7 DO YOU SEE THAT?

02:28PM 8 A. YES.

02:28PM 9 Q. AND THIS IS A SCREENSHOT CAPTURING A DISCUSSION THAT WAS

02:28PM 10 HAD AT THIS PARTICULAR MEETING?

02:28PM 11 A. YES.

02:28PM 12 Q. AND THIS WAS AMONG LAB STAFF; RIGHT?

02:28PM 13 A. I'M SORRY.

02:28PM 14 Q. THIS WAS AMONG THE LAB STAFF, THIS MEETING?

02:28PM 15 A. I DON'T RECALL.

02:28PM 16 Q. OKAY. BUT AT LEAST THAT'S WHO IS ON THE EMAIL; RIGHT?

02:28PM 17 A. YES.

02:28PM 18 Q. AND IF YOU GO TO THE CHART --

02:28PM 19 A. OH, JUST THE EMAIL IS FROM HER TO ME.

02:28PM 20 Q. YES.

02:28PM 21 A. YES, THAT'S IT.

02:28PM 22 Q. SHE'S GIVING YOU THE MINUTES OF THE MEETING; RIGHT?

02:28PM 23 A. YES.

02:29PM 24 Q. FOR YOUR REVIEW.

02:29PM 25 AND ON THE CHART, IF YOU FOLLOW THE FLOW CHART, ON THE

02:29PM 1           UPPER LEFT OF THE FIRST BOX IT SAYS LIHEP CTN?

02:29PM 2           A.     YES.

02:29PM 3           Q.     AND THAT'S A TYPE OF CTN; RIGHT?

02:29PM 4           A.     YES.

02:29PM 5           Q.     AND SO IT'S A BLOOD COLLECTION DEVICE?

02:29PM 6           A.     YES.

02:29PM 7           Q.     AND LIHEP IS LITHIUM HEPARIN?

02:29PM 8           A.     YES.

02:29PM 9           Q.     AND THERE'S DIFFERENT TYPES OF CTN'S, BUT THAT'S ONE OF

02:29PM 10          THEM?

02:29PM 11          A.     CORRECT.

02:29PM 12          Q.     AND THEN THE LIHEP CTN, IF THERE ARE NORMAL RESULTS FOR

02:29PM 13          NAK OR CI, THAT'S SODIUM CHLORIDE OR POTASSIUM?

02:29PM 14          A.     YES.

02:29PM 15          Q.     AND THEN CHECK THE CTN IMAGE; RIGHT?

02:29PM 16          A.     YES.

02:29PM 17          Q.     BRIDGE OR INTERFACE -- IF IT'S BRIDGE OR INTERFACE OR

02:29PM 18          COMPROMISED, THEN YOU GO YES VOID ABNORMAL AND CRITICAL

02:29PM 19          RESULTS; RIGHT?

02:29PM 20          A.     YES.

02:29PM 21          Q.     BUT IF IT'S NOT BRIDGE OR INTERFERENCE OR COMPROMISED,

02:29PM 22          THEN RELEASE RESULTS.

02:29PM 23          THAT'S THE FLOW CHART; RIGHT?

02:29PM 24          A.     YES.

02:29PM 25          Q.     AND THEN ON THE BOX BELOW THE PROCEDURE IS LIHEP CTN, IF

02:30PM 1 IT'S NORMAL, GOOD TO RELEASE; RIGHT?

02:30PM 2 A. YES.

02:30PM 3 Q. AND THEN THERE'S A FURTHER PROCEDURE OF WHAT TO DO IF IT'S

02:30PM 4 ABNORMAL; RIGHT?

02:30PM 5 A. YES.

02:30PM 6 Q. AND THEN, YOU KNOW, I WON'T READ IT ALL, BUT THAT'S WHAT

02:30PM 7 THE FLOW CHART IS; RIGHT?

02:30PM 8 A. YES.

02:30PM 9 Q. OKAY. NOW, YOU, AS A BASIS, AS WELL FROM THE MEETING, YOU

02:30PM 10 IMPLEMENTED THAT PROCEDURE; RIGHT?

02:30PM 11 A. I DON'T RECALL.

02:30PM 12 Q. LET'S TAKE A LOOK AT 20336.

02:30PM 13 AND THIS IS ANOTHER EMAIL FROM YOU TO THE ENTIRE CLIA LAB

02:30PM 14 EMAIL GROUP?

02:30PM 15 A. YES.

02:30PM 16 Q. AND IT RELATES TO THE SAME TOPIC, CTN INTEGRITY AND

02:30PM 17 CRITICAL VALUES?

02:30PM 18 A. YES.

02:30PM 19 Q. AND IT SAYS -- WELL, I WON'T READ IT YET.

02:30PM 20 BUT IT'S AN EMAIL THAT YOU WROTE IN THE NORMAL COURSE OF

02:31PM 21 BUSINESS AT THERANOS; RIGHT?

02:31PM 22 A. YES.

02:31PM 23 MR. COOPERSMITH: YOUR HONOR, WE OFFER 20336.

02:31PM 24 MR. BOSTIC: NO OBJECTION.

02:31PM 25 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

02:31PM 1 (DEFENDANT'S EXHIBIT 20336 WAS RECEIVED IN EVIDENCE.)

02:31PM 2 BY MR. COOPERSMITH:

02:31PM 3 Q. AND THEN IT SAYS, "CLIA,

02:31PM 4 "PLEASE REVIEW THE FOLLOWING SOP REGARDING CTN INTEGRITY

02:31PM 5 AND CRITICAL VALUES."

02:31PM 6 RIGHT?

02:31PM 7 A. YES.

02:31PM 8 Q. AND THIS IS A PROCEDURE THAT YOU'RE IMPLEMENTING?

02:31PM 9 A. YES.

02:31PM 10 Q. AND IF YOU GO TO PAGE 3 OF THE DOCUMENT, YOU SEE IT'S THE

02:31PM 11 SAME FLOW CHART THAT WE JUST REVIEWED?

02:31PM 12 A. YES.

02:31PM 13 Q. AND SO BASICALLY WHAT CAME OUT OF THE MEETING WAS A COUPLE

02:31PM 14 OF FLOW CHARTS AND THEN YOU IMPLEMENT THAT AS A PROCEDURE;

02:31PM 15 RIGHT?

02:31PM 16 A. YES.

02:31PM 17 Q. OKAY. AND IT HAD TO DO WITH REPORTING CRITICAL VALUES FOR

02:31PM 18 ASSAYS, INCLUDING POTASSIUM?

02:31PM 19 A. YES.

02:31PM 20 Q. OKAY. LET'S GO TO 7490.

02:32PM 21 EXHIBIT 7490 IS AN EMAIL STRING -- THE TOP ONE IS BETWEEN

02:32PM 22 YOU AND MR. BALWANI AND OTHERS, AND THEN THERE ARE OTHER EMAILS

02:32PM 23 GOING ON THE PAGE WITH OTHERS.

02:32PM 24 DO YOU SEE THAT?

02:32PM 25 A. YES.

02:32PM 1 Q. AND IT'S AN EMAIL THAT WAS SENT REGARDING CRITICAL ISE'S?

02:32PM 2 A. YES.

02:32PM 3 Q. AND THIS WAS ON OCTOBER 27TH, 2014?

02:32PM 4 A. YES.

02:32PM 5 Q. AND IT RELATED TO THE SAME TOPIC WE HAVE BEEN DISCUSSING,

02:32PM 6 THE USE OF CRITICAL ISE'S, WHICH INCLUDED POTASSIUM?

02:32PM 7 A. YES.

02:32PM 8 MR. COOPERSMITH: YOUR HONOR, WE OFFER EXHIBIT 7490.

02:32PM 9 MR. BOSTIC: YOUR HONOR, HEARSAY OBJECTION AS TO THE

02:32PM 10 EMAIL FROM THE DEFENDANT.

02:33PM 11 (PAUSE IN PROCEEDINGS.)

02:33PM 12 THE COURT: MR. COOPERSMITH, IT LOOKS LIKE IT'S THE

02:33PM 13 TOP TWO EMAILS ON THAT FIRST PAGE.

02:33PM 14 MR. COOPERSMITH: I ASSUME MR. BOSTIC WAS OBJECTING

02:33PM 15 TO THE TOP EMAIL FROM MR. BALWANI TO DR. ROSENDORFF AND OTHERS.

02:33PM 16 MR. BOSTIC: CORRECT, YOUR HONOR.

02:33PM 17 THE COURT: THERE'S TWO, I THINK, TWO EMAILS.

02:33PM 18 THAT'S RIGHT.

02:33PM 19 MR. COOPERSMITH: WELL, MR. BOSTIC CAN CLARIFY. I

02:33PM 20 ASSUMED HIS OBJECTION WAS ONLY TO THE TOP EMAIL.

02:33PM 21 MR. BOSTIC: SO, YOUR HONOR, I THINK THE SAME ISSUE

02:33PM 22 DOES APPLY NOT TO THE TOP TWO ON THAT PAGE, BUT THE TWO

02:33PM 23 MESSAGES FROM THE DEFENDANT ON THAT PAGE.

02:33PM 24 THE COURT: ALL RIGHT. I'LL SUSTAIN IT UNLESS YOU

02:33PM 25 HAVE ANOTHER EXPLANATION OR USE.

02:33PM 1 MR. COOPERSMITH: SURE. WHY DON'T WE REDACT THOSE

02:33PM 2 TWO EMAILS, AND IF THERE'S NO FURTHER OBJECTION, I WOULD OFFER

02:33PM 3 IT THAT WAY.

02:33PM 4 THE COURT: OKAY. THAT'S FINE.

02:34PM 5 WITH THOSE REDACTIONS THEN, IT WOULD BE ADMITTED, AND IT

02:34PM 6 MAY BE PUBLISHED.

02:34PM 7 (DEFENDANT'S EXHIBIT 7490 WAS RECEIVED IN EVIDENCE.)

02:34PM 8 BY MR. COOPERSMITH:

02:34PM 9 Q. AND I'M JUST REALLY GOING TO REFER YOU TO A PARTICULAR

02:34PM 10 EMAIL YOU SENT ON OCTOBER 27TH, 2014, AT 3:28 P.M.

02:34PM 11 DO YOU SEE THAT IN THE MIDDLE OF THE PAGE?

02:34PM 12 A. YES.

02:34PM 13 Q. AND IT SAYS, REGARDING CRITICAL ISE'S, "WE HAD A MEETING

02:34PM 14 WITH TINA, NISHIT, AND THE CLIA LEADERSHIP ABOUT 6 WEEKS AGO TO

02:34PM 15 COME UP WITH A CONSISTENT PRACTICE."

02:34PM 16 RIGHT?

02:34PM 17 A. YES.

02:34PM 18 Q. AND THAT WAS REGARDING HOW TO HANDLE CRITICAL ISE'S;

02:34PM 19 RIGHT?

02:34PM 20 A. YES.

02:34PM 21 Q. AND THAT WAS A MEETING THAT YOU CONDUCTED WITHOUT

02:34PM 22 MR. BALWANI; RIGHT?

02:34PM 23 A. I DON'T REMEMBER IF MR. BALWANI WAS AT THE MEETING OR NOT.

02:35PM 24 SORRY.

02:35PM 25 Q. OKAY. BUT IN ANY EVENT, YOU'RE REPORTING IN THIS EMAIL

02:35PM 1 THAT YOU'RE REPORTING TO MR. BALWANI THAT YOU HAD HAD AN  
02:35PM 2 EARLIER MEETING?  
02:35PM 3 A. YES.  
02:35PM 4 Q. RIGHT?  
02:35PM 5 OKAY. LET'S TAKE A LOOK AT EXHIBIT 7503.  
02:35PM 6 DO YOU SEE THIS IS ANOTHER EMAIL STRING AMONG YOU,  
02:35PM 7 MR. BALWANI, AND DR. DOSHI, AND ELIZABETH HOLMES AND OTHERS.  
02:36PM 8 DO YOU SEE THAT?  
02:36PM 9 A. YES.  
02:36PM 10 I DON'T SEE MY NAME ANYWHERE HERE. I'M SORRY.  
02:36PM 11 Q. OKAY.  
02:36PM 12 A. I'M JUST LOOKING IT OVER, AND YOU SAID AMONG YOU, AND I  
02:36PM 13 DON'T MEAN MY NAME.  
02:36PM 14 Q. OKAY. LET'S PUT THAT ONE ASIDE AND RESERVE THAT.  
02:36PM 15 OKAY. LET'S GO TO A DIFFERENT SUBJECT IN THE TIME WE HAVE  
02:36PM 16 REMAINING TODAY, AND THAT'S THE SUBJECT OF HCG.  
02:36PM 17 DO YOU REMEMBER TALKING ABOUT THAT ON DIRECT EXAM?  
02:36PM 18 A. YES.  
02:37PM 19 Q. SO IF YOU PUT UP EXHIBIT 9196, MR. ALLEN, WHICH IS ALREADY  
02:37PM 20 IN EVIDENCE, THAT'S THE VALIDATION REPORT FOR HCG ON EDISON?  
02:37PM 21 A. YES.  
02:37PM 22 Q. AND THAT'S FROM MARCH 2014.  
02:37PM 23 DO YOU SEE THAT?  
02:37PM 24 A. YES.  
02:37PM 25 Q. SO TO THE EXTENT THAT THERE ARE -- WELL, I WITHDRAW THAT.

02:37PM 1 BUT AS WE DISCUSSED BEFORE, THE PREREQUISITE FOR RUNNING  
02:37PM 2 AN ASSAY IN THE CLIA LAB WOULD BE FOR ONE OF THESE VALIDATION  
02:37PM 3 REPORTS TO BE SIGNED; RIGHT?  
02:37PM 4 A. CORRECT.  
02:37PM 5 Q. LET'S GO TO EXHIBIT 20371.  
02:38PM 6 DO YOU SEE THIS IS AN EMAIL STRING ABOUT HAVING A MEETING  
02:38PM 7 ON MAY 30TH, 2014?  
02:38PM 8 A. YES.  
02:38PM 9 Q. AND IT'S WITH SEASON FLORES, WHO IS THE EXECUTIVE  
02:38PM 10 ASSISTANT TO ELIZABETH HOLMES?  
02:38PM 11 A. YES.  
02:38PM 12 Q. AND IT'S REGARDING -- WELL, IT'S ABOUT A SUBJECT PERTINENT  
02:38PM 13 TO THE CLIA LAB; RIGHT?  
02:38PM 14 A. YEAH. I DON'T KNOW WHAT THE EXACT TOPIC IS, BUT IT SAYS  
02:38PM 15 CLIA MEETING, IMPORTANCE HIGH, YEAH.  
02:38PM 16 Q. OKAY. AND THE MEETING INVITE IS IT 3:34 P.M. ON MAY 30TH?  
02:38PM 17 A. YES.  
02:38PM 18 Q. AND THE REQUEST IS FOR THE MEETING AT 4:00 P.M.; RIGHT?  
02:39PM 19 A. YES.  
02:39PM 20 Q. SO PRETTY QUICKLY AFTER THE EMAIL?  
02:39PM 21 A. YEP.  
02:39PM 22 MR. COOPERSMITH: YOUR HONOR, WE OFFER  
02:39PM 23 EXHIBIT 20371.  
02:39PM 24 MR. BOSTIC: NO OBJECTION.  
02:39PM 25 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

02:39PM 1 (DEFENDANT'S EXHIBIT 20371 WAS RECEIVED IN EVIDENCE.)

02:39PM 2 THE COURT: MR. COOPERSMITH.

02:39PM 3 MR. COOPERSMITH: YES, OF COURSE, YOUR HONOR.

02:39PM 4 Q. DO YOU SEE, DR. ROSENDORFF, THERE'S AN EMAIL REFERRED TO

02:39PM 5 FROM MS. FLORES, "ELIZABETH HAS ASKED ME TO COORDINATE A CLIA

02:39PM 6 MEETING THIS AFTERNOON FOR 4:00 P.M."

02:39PM 7 DO YOU SEE THAT?

02:39PM 8 A. YES.

02:39PM 9 Q. AND AGAIN, THAT'S AT 3:34 P.M.; RIGHT?

02:39PM 10 A. YES.

02:39PM 11 Q. AND SHE ASKS YOU FOR A LIST OF ATTENDEE; RIGHT?

02:39PM 12 A. YES.

02:39PM 13 Q. AND YOU RESPOND, "SEASON,

02:39PM 14 IF IT'S THE WHOLE CLIA, THEN CLIA SHOULD BE INVITED (THERE

02:39PM 15 IS A DIRECTORY). IF IT IS JUST CURRENT CLIA LEADERSHIP, THEN

02:39PM 16 THE FOLLOWING PEOPLE SHOULD BE INVITED."

02:39PM 17 AND THEN YOU ARE IDENTIFYING THE PEOPLE WHO YOU THOUGHT

02:40PM 18 SHOULD ATTEND; RIGHT?

02:40PM 19 A. YES.

02:40PM 20 Q. AND THAT INCLUDES MS. ALAMDAR; RIGHT?

02:40PM 21 A. YES.

02:40PM 22 Q. AND MR. GEE?

02:40PM 23 A. YES.

02:40PM 24 Q. AND OTHERS; RIGHT?

02:40PM 25 A. YES.

02:40PM 1 Q. OKAY. LET'S GO TO EXHIBIT 4145.

02:41PM 2 OKAY. I THINK THIS IS ALREADY IN EVIDENCE, SO IF WE CAN

02:41PM 3 PUBLISH IT, YOUR HONOR.

02:41PM 4 THE COURT: YES.

02:41PM 5 BY MR. COOPERSMITH:

02:41PM 6 Q. AND THIS IS ON THE SAME DAY AS THE LAST EXHIBIT THAT WE

02:41PM 7 LOOKED AT; RIGHT?

02:41PM 8 A. YES.

02:41PM 9 Q. AND ELIZABETH HOLMES SAYS, "I'VE DONE MANY MEETINGS ON

02:41PM 10 THIS TODAY"; RIGHT?

02:41PM 11 A. YES.

02:41PM 12 Q. REGARDING HCG?

02:41PM 13 A. YES.

02:41PM 14 Q. NOW, YOU ON DIRECT WERE ASKED -- LET'S JUST GO TO 28466.

02:41PM 15 IF WE CAN SHOW THAT ON DR. ROSENDORFF'S SCREEN, PLEASE.

02:41PM 16 EXHIBIT 28466, AND PARTICULARLY PAGE 7. IF YOU COULD REFER TO

02:42PM 17 THAT PAGE?

02:42PM 18 MR. BOSTIC: YOUR HONOR, RELEVANCE TO DISPLAYING

02:42PM 19 THIS TO THE WITNESS AT THIS POINT.

02:42PM 20 THE COURT: DO YOU WANT TO -- WHY DON'T YOU ASK A

02:42PM 21 QUESTION.

02:42PM 22 MR. COOPERSMITH: SURE.

02:42PM 23 Q. DR. ROSENDORFF, DO YOU REMEMBER TESTIFYING ON WEDNESDAY

02:42PM 24 ABOUT HCG?

02:42PM 25 A. YES.

02:42PM 1 Q. AND DO YOU REMEMBER TESTIFYING THAT YOU MADE A DECISION IN  
02:42PM 2 AN EMAIL THAT USE OF EDISON FOR HCG TESTING NEEDED TO STOP?  
02:42PM 3 A. YES.  
02:42PM 4 Q. AND THAT WAS ON MAY 30TH?  
02:42PM 5 A. I DON'T RECALL THE DATE, SIR.  
02:42PM 6 Q. OKAY. WE CAN LOOK AT THAT.  
02:42PM 7 BUT IN ANY EVENT, YOU RECALL THAT EMAIL; RIGHT?  
02:42PM 8 A. YES.  
02:42PM 9 Q. AND THAT YOU WERE ASKED A QUESTION, YOU REMEMBER, ABOUT  
02:42PM 10 DID YOU EVER GO BACK ON THE DECISION AND AUTHORIZE THERANOS TO  
02:42PM 11 USE THE EDISON?  
02:42PM 12 AND YOU SAID YOU DID NOT; RIGHT?  
02:42PM 13 A. YES.  
02:42PM 14 Q. THAT'S YOUR TESTIMONY, SIR?  
02:42PM 15 A. YES.  
02:42PM 16 Q. OKAY. LET'S TAKE A LOOK AT 20564.  
02:43PM 17 YOUR HONOR, THESE NEXT TWO EMAILS WILL BE THE LAST EMAILS  
02:43PM 18 I THINK BEFORE WE HAVE TO BREAK AT 2:45, IF THAT'S OKAY.  
02:43PM 19 THE COURT: OF COURSE.  
02:43PM 20 BY MR. COOPERSMITH:  
02:43PM 21 Q. 206 -- I'M SORRY, 20564.  
02:43PM 22 DO YOU HAVE THAT IN FRONT OF YOU?  
02:43PM 23 A. YES.  
02:43PM 24 Q. AND THIS IS AN EMAIL STRING AMONG YOURSELF AND MS. ALAMDAR  
02:43PM 25 AND CHINMAY PANGARKAR.

02:43PM 1 DO YOU SEE THAT?

02:43PM 2 A. YES.

02:43PM 3 Q. AND THERE ARE OTHERS ON THE EMAIL STRING AS WELL; RIGHT?

02:43PM 4 A. YES.

02:43PM 5 Q. AND THIS RELATES TO HCG?

02:43PM 6 A. YES.

02:43PM 7 Q. AND THIS WAS FROM JUNE 5TH AND 6TH OF 2014?

02:43PM 8 A. YES.

02:43PM 9 Q. SO IF THE EMAIL THAT YOU SENT TO STOP TESTING ON EDISON

02:44PM 10 WAS ON MAY 30TH, THIS WOULD JUST BE A FEW DAYS AFTER THAT;

02:44PM 11 RIGHT?

02:44PM 12 A. YES.

02:44PM 13 Q. OKAY. AND THEN IF YOU GO TO THE EMAIL ON THE BOTTOM OF

02:44PM 14 PAGE 1, AND IT CONTINUES TO PAGE 2, IT'S FROM HODA ALAMDAR AT

02:44PM 15 1:20 P.M. TO YOU, DR. ROSENDORFF.

02:44PM 16 A. YES.

02:44PM 17 Q. IT SAYS, WITH REGARD TO A PARTICULAR SAMPLE, "TO CONFIRM,

02:44PM 18 I CAN RELEASE" --

02:44PM 19 MR. BOSTIC: YOUR HONOR, THIS IS NOT IN EVIDENCE.

02:44PM 20 MR. COOPERSMITH: OH, IT ISN'T.

02:44PM 21 I OFFER THESE IN THAT CASE.

02:44PM 22 MR. BOSTIC: 901.

02:44PM 23 MR. COOPERSMITH: YOUR HONOR, HE'S IDENTIFIED IT AS

02:44PM 24 AN EMAIL THAT HE'S FAMILIAR WITH AND SENT AND RECEIVED.

02:44PM 25 THE COURT: WHAT IS IT THAT -- ARE YOU SEEKING TO

02:44PM 1 INTRODUCE THE ENTIRETY OF THIS DOCUMENT, ALL OF THE PAGES HERE,

02:44PM 2 OR WHAT?

02:45PM 3 MR. COOPERSMITH: YOUR HONOR, I'M INTENDING TO

02:45PM 4 INTRODUCE THIS AS AN EMAIL STRING.

02:45PM 5 THE COURT: ALL OF THIS?

02:45PM 6 MR. COOPERSMITH: YES, YOUR HONOR.

02:45PM 7 THE COURT: I'LL ALLOW IT. IT CAN BE ADMITTED AND

02:45PM 8 PUBLISHED.

02:45PM 9 (DEFENDANT'S EXHIBIT 20564 WAS RECEIVED IN EVIDENCE.)

02:45PM 10 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

02:45PM 11 Q. IF YOU GO TO THE BOTTOM EMAIL, YOU SEE IT SAYS FROM

02:45PM 12 HODA ALAMDAR TO DR. ROSENDORFF, AND HER QUESTION, "TO CONFIRM,

02:45PM 13 I CAN RELEASE THE HCG RESULT?"

02:45PM 14 DO YOU SEE THAT?

02:45PM 15 A. YES.

02:45PM 16 Q. AND THEN YOU WRITE BACK RIGHT AFTER THAT, "PLEASE HOLD THE

02:45PM 17 RESULT UNTIL CHINMAY IS DONE WITH HIS RLU STUDY TODAY -- WE CAN

02:45PM 18 RUN CTN HCG BUT NEED TO HOLD RESULTS UNTIL WE KNOW WHAT THE

02:45PM 19 INVALID CUTOFF IS."

02:45PM 20 DO YOU SEE THAT?

02:45PM 21 A. YES.

02:45PM 22 Q. AND SO YOU WANTED TO HOLD EVERYTHING UNTIL CHINMAY WAS

02:45PM 23 DONE WITH HIS STUDY?

02:45PM 24 A. YES.

02:45PM 25 Q. AND THEN MS. ALAMDAR WRITES, "ADAM/CHINMAY,

02:45PM 1 "ANY UPDATES ON THE HCG? WE HAVE MULTIPLE PATIENTS  
02:45PM 2 PENDING TO BE RELEASED."  
02:46PM 3 RIGHT?  
02:46PM 4 A. YES.  
02:46PM 5 Q. AND THEN YOU WRITE, "HODA,  
02:46PM 6 "CHINMAY WILL BE IMPLEMENTING A SCRIPT SHORTLY TO  
02:46PM 7 REQUALIFY VALID VERSUS INVALID HCG VALUES. STAY TUNED."  
02:46PM 8 RIGHT?  
02:46PM 9 A. YES.  
02:46PM 10 Q. YOU'RE STILL WAITING FOR DR. PANGARKAR'S STUDY; RIGHT?  
02:46PM 11 A. YES.  
02:46PM 12 Q. AND THEN HE SAYS, "WE ARE WORKING ON AND WILL LET YOU KNOW  
02:46PM 13 WHEN IT IS READY."  
02:46PM 14 DO YOU SEE THAT?  
02:46PM 15 A. YES.  
02:46PM 16 Q. AND THEN ABOVE THAT DR. PANGARKAR SENDS AN EMAIL TO YOU  
02:46PM 17 AND HE WRITES, "HI HODA," WITH REGARDS TO THE SAMPLES, "ARE  
02:46PM 18 READY TO BE RELEASED. THE LATEST RESULTS THAT YOU CAN RELEASE  
02:46PM 19 ARE IN."  
02:46PM 20 AND HE GIVES AN S DRIVE LOCATION; RIGHT?  
02:46PM 21 A. YES.  
02:46PM 22 Q. AND SO HE INFORMS YOU THAT HE IS RELEASING THE RESULTS?  
02:46PM 23 A. YES.  
02:46PM 24 Q. AND YOU HAD TOLD HIM THAT WHEN THE STUDY WAS COMPLETED,  
02:46PM 25 THAT'S WHAT COULD HAPPEN; RIGHT?

02:46PM 1 A. YES.

02:46PM 2 MR. COOPERSMITH: OKAY. NO FURTHER QUESTIONS FOR

02:46PM 3 TODAY, YOUR HONOR.

02:46PM 4 THE COURT: ALL RIGHT. THANK YOU. LADIES AND

02:46PM 5 GENTLEMEN, WE'LL TAKE OUR WEEKEND BREAK NOW.

02:46PM 6 AND, YES, YOU CAN --

02:46PM 7 THE WITNESS: I'M SORRY.

02:46PM 8 THE COURT: RESTRAIN YOUR ENTHUSIASM, DOCTOR.

02:46PM 9 (LAUGHTER.)

02:47PM 10 THE COURT: WE'LL BE BACK TUESDAY, TUESDAY NEXT AT

02:47PM 11 9:00 A.M.

02:47PM 12 WHEN WE COME BACK, I THINK WHAT WE'RE GOING TO DO, MUCH

02:47PM 13 LIKE IN HOCKEY, WE'LL DO A LINE CHANGE AND THE FRONT SEATS WILL

02:47PM 14 MOVE TO THE BACK AND THE BACK TO THE FRONT, AND WE MAY HAVE

02:47PM 15 SOME OTHER ADJUSTMENTS TO MAKE, BUT WE'LL DO THAT.

02:47PM 16 LET ME REMIND YOU OF THE ADMONITION. DURING YOUR WEEKEND

02:47PM 17 AND MONDAY OFF, PLEASE DO NOT DO ANY INVESTIGATION, DO NOT

02:47PM 18 DISCUSS, READ, LISTEN TO OR IN ANY WAY TRY TO LEARN ANYTHING

02:47PM 19 ABOUT THIS CASE.

02:47PM 20 HAVE A LOVELY WEEKEND. I HOPE THE RAIN CONTINUES. WE

02:47PM 21 NEED IT.

02:47PM 22 ENJOY. AND WE'LL SEE YOU NEXT TUESDAY.

02:47PM 23 THANK YOU.

02:47PM 24 AND, DR. ROSENDORFF, WE'LL SEE YOU TUESDAY AS WELL. THANK

02:47PM 25 YOU.

02:47PM 1 THE WITNESS: THANK YOU, YOUR HONOR.

02:48PM 2 (JURY OUT AT 2:48 P.M.)

02:48PM 3 THE COURT: PLEASE BE SEATED. THANK YOU.

02:48PM 4 THE RECORD SHOULD REFLECT THAT OUR JURY HAS LEFT FOR THEIR

02:48PM 5 WEEKEND, AND DR. ROSENDORFF HAS LEFT THE COURTRoom.

02:48PM 6 ANYTHING BEFORE WE BREAK, COUNSEL?

02:48PM 7 MR. COOPERSMITH: NO, YOUR HONOR.

02:48PM 8 MR. BOSTIC: NO, YOUR HONOR.

02:48PM 9 THE COURT: ALL RIGHT. GREAT. HAVE A GREAT

02:48PM 10 WEEKEND. WE'LL SEE YOU NEXT WEEK. THANK YOU.

02:48PM 11 (COURT ADJOURNED AT 2:48 P.M.)

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1  
2  
3 CERTIFICATE OF REPORTERS  
4  
5  
6

7 WE, THE UNDERSIGNED OFFICIAL COURT REPORTERS OF THE  
8 UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF  
9 CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO  
10 HEREBY CERTIFY:

11 THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS  
12 A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE  
13 ABOVE-ENTITLED MATTER.

14   
15

16 

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IRENE RODRIGUEZ, CSR, CRR  
17 CERTIFICATE NUMBER 8076  
18



19 

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LEE-ANNE SHORTRIDGE, CSR, CRR  
20 CERTIFICATE NUMBER 9595  
21

22 DATED: APRIL 22, 2022  
23  
24  
25